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Wisconsin Federated Humane Societies Inc. et al,

Case No. 12 CV 3188

v.

ORDER & JUDGMENT

Cathy Stepp et al.

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Hearing in the above case having been held on January 8, 2013, and January 16, 2013, all parties appearing by counsel of record, for the reasons stated on the record of said hearings and incorporating the court's ruling of September 14, 2012:

IT IS ORDERED that defendant-intervenors' renewed motion to dismiss for lack of standing is DENIED;

IT IS FURTHER ORDERED that JUDGMENT BE ENTERED:

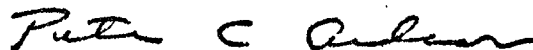
1. Declaring that the Wisconsin Natural Resources Board has the authority under Section 21 of 2011 Act 169 to promulgate emergency and final rules for the safe and humane use of dogs in the tracking and trailing of wolves in hunting; and remanding the matter to the Natural Resources Board with instructions that within 45 days of the date of this order the Board determine, in accordance with Wis. Stat. § 227.12(3), whether to undertake further rulemaking pursuant to the authority so declared;
2. Declaring Wis. Admin. Code § NR 17.04(1) invalid as exceeding agency authority to the extent it authorizes the training of dogs on free-roaming, wild wolves;

IT IS FURTHER ORDERED that the temporary injunction issued on August 31, 2012, is VACATED.

This is a final decision for purposes of appeal.

Dated this 16<sup>th</sup> day of January, 2013,

BY THE COURT:



Peter C Anderson  
Circuit Court, Branch 17

CC: Atty. Carl Sinderbrand  
Atty. Robert Habush  
Atty. Jodi Habush-Sinykin  
AAG Thomas Dawson  
AAG Cynthia Hirsch  
Atty. Thomas Janczewski  
Atty. Ted Wisniewski  
Atty. James Lister  
Atty. Anna Seidman  
Atty. Michael Maistelman  
Atty. Stacy Wolf  
Atty. Jennifer Chin

JULY 17, 2012

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## NATURAL RESOURCES BOARD

### BRIEF OF ACTION

A special meeting of the Natural Resources Board was held on Tuesday, July 17, 2012 in the Spruce/Sands Conference Room at the Holiday Inn Convention Center, 1001 Amber Avenue, Stevens Point, Wisconsin. The meeting was called to order at 9:00 a.m. for action on items 1 and 3. The meeting adjourned at 3:05 p.m.

#### ORDER OF BUSINESS

1. Organizational Matters

1.A. Calling the roll

William Bruins – present	Preston Cole – present
Christine Thomas – present	Jane Wiley – present
Terry Hilgenberg – present	David Clausen – present
Greg Kazmierski – present	

1.B. Approval of agenda for July 17, 2012

Mr. Cole **MOVED** approval, seconded by Mr. Kazmierski. The motion carried unanimously.

2. Information Item

2.A. Update on Wetland Legislation Implementation

INFORMATIONAL ITEM – NO ACTION WAS TAKEN

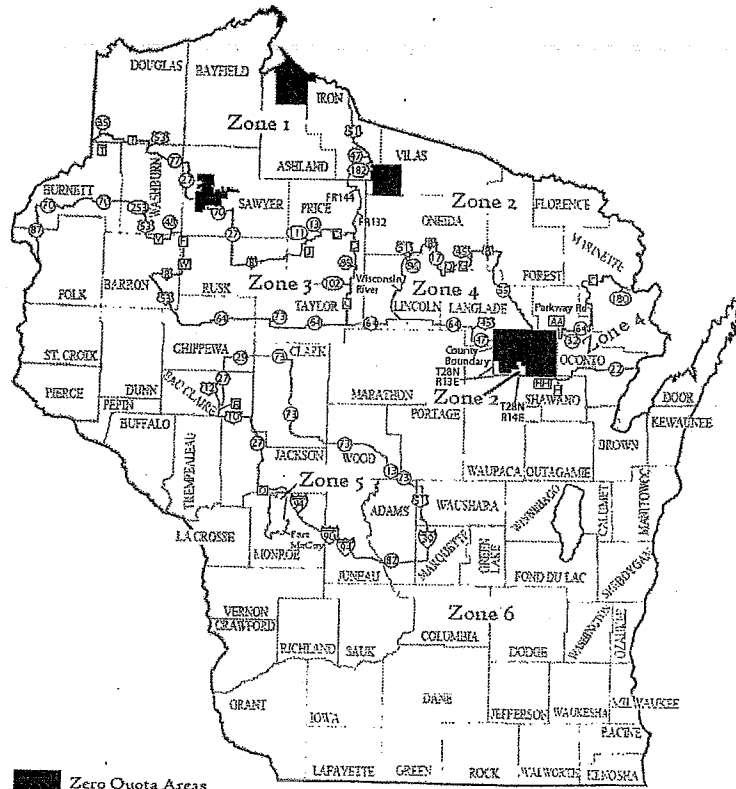
3. Action Item

3.A. Request adoption of Emergency Board Order WM-09-12(E), proposed rules affecting Ch.'s NR 10, 12, and 19 pertaining to the wolf hunting and trapping season and regulations, a depredation program, and approval of quota and permit levels, and approval of 2012 wolf harvest zones and inclusion of 2012 harvest zones as addendum to Wolf Management Plan

Mr. Cole **MOVED** approval, seconded by Ms. Wiley.

Mr. Hilgenberg **MOVED**, seconded by Dr. Thomas, to amend Board Order WM-09-12(E) to add the Stockbridge-Munsee lands to the non-quota areas where wolf harvest is not allowed.

1. In SECTION 27 amending NR 10.145(30(f), at the end of the second sentence, add "Stockbridge-Munsee wolf zone".
2. In SECTION 29 creating NR 10.295, replace the map with this map:



Zero Quota Areas  
 Wolf harvest is not allowed within the exterior boundaries of the Bad River, Lac Courte Oreilles, Lac du Flambeau, Menominee, and Red Cliff reservations nor within the designated Stockbridge-Munsee wolf zone except with DNR depredation permits.

The motion passed 7 - 0 on a roll call vote.

- |                        |                     |
|------------------------|---------------------|
| William Bruins – yes   | Preston Cole – yes  |
| Christine Thomas – yes | Jane Wiley – yes    |
| Terry Hilgenberg – yes | David Clausen – yes |
| Greg Kazmierski – yes  |                     |

Ms. Wiley **MOVED**, seconded by Dr. Clausen to amend Board Order WM-09-12(E) to require the department to consider establishing additional areas where wolf harvest by hunting and trapping are not allowed if a tribe makes that request.

1. In SECTION 27 amending NR 10.145(3)(f), create a third sentence which reads, “The department shall consider requests from any tribe for inclusion in additional zero quota, no-harvest zones by rule.”
2. In SECTION 29 creating NR 10.295, add a sentence following the introductory material which reads, “The department shall consider requests from any tribe for inclusion in additional zero quota, no-harvest zones by rule.”

The motion failed 3 - 4 on a roll call vote.

- |                        |                    |
|------------------------|--------------------|
| William Bruins – no    | Preston Cole – yes |
| Christine Thomas – yes | Jane Wiley – yes   |
| Terry Hilgenberg – no  | David Clausen – no |
| Greg Kazmierski – no   |                    |

Dr. Thomas **MOVED**, seconded by Mr. Hilgenberg to amend Board Order WM-09-12(E) to include language that the department shall come back to the Board on September 26, 2012 with a plan for data gathering and that the data must answer many of the unknown questions prior to the permanent rule. Data also must be

gathered annually from the wolf harvesting season. This information must be utilized in establishing recommendations for subsequent seasons. Information gathered shall include, but is not limited to, whether or not there has been physical contact between dogs and wolves, and information necessary to use the criteria in subs. (1m) and (1u) to establish harvest quotas and the number of licenses to issue.

Mr. Cole requested that the department come back to the Board at the September 26, 2012 meeting with a timeline for updating the Wolf Management Plan and that the new wolf plan must be proposed in tandem with the permanent rule.

The motion passed 7 - 0 on a roll call vote.

William Bruins – yes	Preston Cole – yes
Christine Thomas – yes	Jane Wiley – yes
Terry Hilgenberg – yes	David Clausen – yes
Greg Kazmierski – yes	

Dr. Thomas MOVED, seconded by Mr. Hilgenberg to amend Board Order WM-09-12(E) to require any wolf found not dead in the trap be humanely dispatched by shooting.

[This is in a trapping-only section, preceded by the introductory material, “No person may ...”]

Section 25. NR 10.13(1)(b)18. is created to read:

NR 10.13(1)(b)18. ‘Killing captured wolves.’ Kill any wolf except by the use of a firearm. A person who is prohibited from possessing a firearm under state or federal law, who has caught a wolf by trapping, may authorize a person who is accompanying them and who is allowed to possess and use a firearm to kill the trapped wolf with a firearm.

The motion passed unanimously.

Dr. Clausen commented on reopening the wolf plan. As was said today, the wolf plan was the reason Wisconsin got the delisting. If there is reluctance to reopen the wolf plan, which the Board has mandated should happen every five years, look at what was actually in the wolf plan that we received the delisting from. We have departed a long way from the plan in that it calls for no public harvest for a considerable period of time and it called for no compensation for dogs used for hunting. There were several things in there that were absolutely ignored. Fish and Wildlife did not say that this a deal breaker and we are going to relist you. I do not think we should have any fear about reopening this plan, especially when we are trying to bring more knowledge in.

Mr. Cole reminded the Board that there was an update to that plan in 2006-2007.

Ms. Wiley asked Secretary Stepp to use her considerable powers of persuasion as well as the strength of her position to convince the Legislators not use their collective heavy hand to enact laws rather than to go through the usual administrative rule process

We’ve seen with Act 169 what happens when the professional DNR staff and the Natural Resources Board are excluded from the process.

And if the Legislature ignores you, Secretary Stepp, I hope you can appeal to the Governor not to sign environmental laws forwarded to him. We need public hearings beyond the Natural Resources Committees of the Assembly and Senate. We need our professional staff’s input, we need the Congress, we need environmental and conservation organizations and interested citizens input. And we need the Natural Resources Board to review the process and set the policy. We need total transparency for Wisconsin citizens to trust and value what DNR does and that will not happen if we are continually forced down this awkward and unreasonable path (ovation).

Mr. Cole called the question.

JULY 17, 2012

**The original motion as amended passed 7 - 0 on a roll call vote.**

**William Bruins – yes**

**Preston Cole – yes**

**Christine Thomas – yes**

**Jane Wiley – yes**

**Terry Hilgenberg – yes**

**David Clausen – yes**

**Greg Kazmierski – yes**

**Mr. Cole MOVED, seconded by Mr. Bruins to adjourn the meeting. The motion carried unanimously.**

\*\*\*The meeting adjourned at 3:05 p.m.\*\*\*

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## NATURAL RESOURCES BOARD

DRAFT MINUTES (rev. 8/18/12)

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### ORDER OF BUSINESS

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1.A. Calling the roll

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1.B. Approval of agenda for July 17, 2012

**Mr. Cole MOVED approval, seconded by Mr. Kazmierski. The motion carried unanimously.**

2. Information Item

2.A. Update on Wetland Legislation Implementation

**Ken Johnson**, Water Administrator, updated the Board on the Water Regulation Handbook and the new Chapter 200 (all about wetlands). He discussed the seven step process practical alternatives analysis (PAA), when to limit the PAA, functional analysis factors, decision making, the seven steps to completeness, limiting alternatives to the site. He then reviewed the three decision standards 1) avoidance of wetland impact, 2) minimization, and 3) no significant adverse impact. **(PowerPoint)**

Discussion followed as to the roll-out timeline of the implementation.

3. Action Item

3.A. Request adoption of Emergency Board Order WM-09-12(E), proposed rules affecting Ch.'s NR 10, 12, and 19 pertaining to the wolf hunting and trapping season and regulations, a depredation program, and approval of quota and permit levels, and approval of 2012 wolf harvest zones and inclusion of 2012 harvest zones as addendum to Wolf Management Plan

**Kurt Thiede**, Land Administrator, and **Bill Vander Zouwen**, Wildlife Ecology Section Chief, gave a joint presentation. They reviewed the timeline from Act 169 signing date of April 2, 2012 through October 15, 2012 when the season begins. They then discussed the process and input, wolf recovery and population trend, location of WI wolf packs, WI farms experiencing wolf depredation, statutory provisions already decided, objectives for wolf season rule and 2012 quotas, approach to harvest zones, approach to quotas, quotas for public input, wolf quotas for 2012-2013, other states & provinces percent harvest, human-caused mortality, quota impact, hunter licenses, reporting & registration, season closures, trapping, hunting hours, night hunting, baiting for hunting, technology, key depredation program elements, wolf proposal survey results, key tribal concerns, and the next steps. They then requested the Board adopt emergency board order WM-09-12(E). **(PowerPoint)**

Discussion followed on whether it is state required to have bear hunting dogs vaccinated for rabies.

**Chair Clausen** stated that to make sure the Board receives feedback on key aspects of the wolf season rule, quotas and permit levels, we are requesting that testimony and written comments focus on aspects of the rule that are within the Board's ability to address. The law (Wis. Act 169) established specific parameters that cannot be changed without legislation. The statute clearly establishes that: there will be a harvest; the season dates (Oct. 15 - end of

February); up to 6 dogs are allowed for hunting wolves starting the day after the November Gun Deer season; that trapping is allowed; the license and application fees are set (\$10 application, \$100 resident, \$500 non-resident); hunting is allowed; baiting is allowed; hunting at night is allowed following the November Gun Deer season, and shotguns, crossbows, bows and rifles can be used. Again, none of these provisions can be changed without legislation. What the Board is able to consider is how these various techniques and provisions are implemented, as well as how many wolves should be harvested, the number of permits are issued, and where the harvest should occur. We know this is an important issue for many, and the Board is counting on your testimony and written comments to help make its decision, therefore, focusing on how things occur, instead of if they should or shouldn't occur is of much more value to this Board.

**Chair Clausen** recognized all of the various representatives from the various federally recognized sovereign tribes in Wisconsin that were in attendance. The Board, and the Department, are committed to and recognize the importance of our government-to-government relations, and that those relations involve respectful and cooperative communication and dealings. He offered that should any tribal representative wish to appear earlier in the schedule, as reflects that special relationship, the Board would be more than happy to accommodate you.

**Chair Clausen** stated that in addition, Tribal Representatives, WI legislators, and WI Conservation Congress are uniquely granted the permission to address the Board with no time restriction. All other speakers will have 3 minutes to give their testimony. At the sound of the alarm, the speakers will have 15 seconds to conclude their testimony out of respect for the speakers following you.

**Public Appearances:**

1. **Representative Scott Suder**, Abbotsford, 69<sup>th</sup> Assembly District. He stated that after the federal delisting of wolves last November 2011, he alone with Senator Terry Moulton co-authored a bill in the 2011 legislative session which gives the DNR authority to begin managing wolves in WI - a public harvest as the method to control the wolf population. The bill passed in the legislature with great bi-partisan support. Governor Walker signed Act 169 into law on April 2, 2012. They worked with DNR staff, along with attorneys and many others as well as hunters, farmers, and constituents in crafting this legislation. This was a combined effort and a very successful effort. They used Appendix J to document the harvest season that was created but not part of the Wolf Management Plan as a guideline for drafting this bill. The cost for a harvest tag was \$100. After hearing complaints from hunters and trappers and looking at the western states and their fee structure, he plans to lower the harvest tag fee in the next session 2013-2015. He stated he would be very clear that they gave the DNR great flexibility to create rules to achieve a framework for a hunting and trapping season including setting quotas, zones, and permit levels. After reviewing the proposed rule, he was disappointed that the harvest levels are not higher. He understood that this is the first season and the DNR needs to take the conservative approach. But he felt it could have been more aggressive. For the past 10 years, his office has received numerous calls concerning wolves and the need to control them. 18 counties in northern WI have drafted resolutions to manage wolf numbers down to a 350 goal, a number that is part of the DNR WI Wolf Management Plan. He understood this as an emergency rule and that the DNR is working to develop a permanent rule. He stated that the legislative intent of the bill is clear. The intention is to manage wolves down to a 350 goal which is part of the WI Wolf Management Plan. This is what his constituents in his district, along with many others throughout the northern counties, are demanding of legislators and are demanding of this Board. He expects the DNR to craft a permanent rule to manage the wolf population to 350 goal as intended. **(Handout)**

Discussion followed on one of the written comment concerns received that the legislature did not seek the science and there was not adequate public input.

**Representative Suder** stated that yes, public input was actually quite impressive. Not only input received from constituents, they worked very closely with many, many individuals in the Wisconsin DNR. They had many conversations with tribal members. They also had two very well attended public hearings in Madison. This is not a closed door process in any way. This was not a rushed process. They utilized the WI Wolf Management Plan and Appendix J. He believes it is based on science and based on utilizing experts in the field in terms of the people that we did outreach to develop and craft legislation. This is not just legislators sitting amongst themselves crafting legislation. They worked closely with the DNR and others to develop this and they think they have it right.

Discussion followed as to where the hearings were in Madison and whether they were before the Natural Resources committees of the Assembly and the Senate or beyond.

**Representative Suder** stated the Natural Resources committees held hearings.

**Ms. Wiley** asked Representative Scott Suder, co-author of Act 169 and first speaker before the Board, how many were in attendance at the Senate and Assembly hearings.

**Representative Suder** stated that he did not have the information but would get back to the Board.

Discussion followed as to whether there is any evidence that the 350 management goal as established in 1999 was not a good goal in 2012.

**Representative Suder** stated that they operated off the WI Wolf Management Plan that exists. They operated off the science and experts within the DNR, others, and their constituents to develop the criteria. They also gave DNR great flexibility with regard to the wolf. They thought that was important. In this case, it was important to get it right. The 350 goal is based on science. It is based on the DNR's own plan. That is the why they decided to go with it. It is still relevant today as it was in 1999. There are others that will say they should do a do-over here. That was the science we have before us and we still think it is still very sound science.

2. **Jennifer Stenglein**, Madison, University Researcher. She stated she had worked with Dr. Timothy Van Deelen to develop a model to predict the short and long-term impact of the proposed harvest scenario on the WI wolf population. There are important limitations to this model because the influence of some population-level effects are difficult to quantify and predict. Disease events and behavioral changes due to harvest were not included. If 1 number is reported from the model, she asked to correct the 10% population reduction prediction and say that the model showed an average 13.5% population reduction in the next year. The difference in these numbers if the outcome from modeling harvest as a discrete number of wolves or as a percentage of wolves in each zone. She asked that these numbers come from a model that is more likely underestimating the true population reduction compared to overestimating it. **(Handout)**

Discussion followed on whether there have been any changes to the early model that showed a steadily declining population that did not stabilize and later it showed stability on core population that had less than a 10% human caused mortality which also required the inflow of wolves from Minnesota and Michigan, whether the minimum population count, population estimate, or an individual based model was plugged into the model, whether 1,000 wolves would dramatically change the results, whether this model is used by any other state, and whether the model is peer reviewed and accepted.

3. **Joseph Miller**, Bowler, Tribal Council Member and **Randall Wollenhaup**, Bowler, Tribal Wildlife Biologist, representing Stockbridge-Munsee Band of Mohican Indians **(Handout)**

**Mr. Miller** stated that on behalf of their Tribal President Robert Chicks and Tribal Council of the Stockbridge-Munsee Community (SMC), he extended their heartfelt thanks and blessings to all who had gathered here and are listening. He summarized the letter presented to the Board from Chair Chicks. Wolves are a clan animal and has great cultural significance. There are eleven tribes in the state of Wisconsin, all with unique individual, culturally significant aspects. He extended his welcome and acknowledgement to all of his tribal brethren that are appearing before the Board today. Wolves are of great importance to SMC. SMC has worked cooperatively with the state of Wisconsin over past years on numerous issues – bear, fish, and now wolf. They acknowledge that working relationship and it is their intent to continue. It needs to be stated, working relationships that we have something to work for. They are concerned with the overly aggressive approach, especially in these initial phases. The first year is an experimental year. Much data will be collected, much information will be gathered and as that develops, and permanent rules will be implemented. SMC asks that the policy makers do not act in haste to implement. SMC respects everyone's opinion, everyone has roots embedded here.

**Mr. Wollenhaup** offered an amendment showing a no harvest zone on their holdings and requested the Board approval of this no harvest zone. This is a concession on SMC's part. Tribal members he worked with have no interest in having the wolf listed as a game species nor any interest in harvesting it. They have rules within



their tribal management plan that there will be no harvest on the reservation. Looking at the DNR proposal as written, they have a few other concerns. 1) As stated by DNR staff already, the WI Wolf Management Plan must be updated. As some have stated earlier to the Board, the proposed hunt is based on this Plan. The management plan also calls for public review of management goals every 5 years. That has not occurred. Since over the 13 years since the plan has been put out, a lot of research has been conducted, and information collected. If the DNR is truly going to base this proposal and hunt on sound science and good conservation practices, we need to be able to use that information.

2) There has been a lot of talk about increased depredation when this bill was originally written. Some of those wolves have since been removed. If people are truly concerned with increased depredation, there are ways other than public harvest to look at. There are studies out there that have looked at bear baiting season and how that relates to dog depredations. That study is pretty clear and came out last year. Those findings were that it indicated the probability of wolf hunting dog depredation is significant in relation to the duration of bear baiting. If you truly want to increase depredation in WI, this is something that needs to be looked at. They are not requiring any payment for dog hunters in the state of WI. SMC would like to see that when the DNR puts out a zone where wolf packs are known to have depredated on dogs, and if hunters still choose to run their dogs there then they are taking the risk.

3) SMC also has concerns about future monitoring and education funding. The majority of the money collected from this licensing is going to go to depredation payments. They have already begun to see some participation, volunteer trackers, because they know something is coming. Their concerns are that the information they are providing the DNR is essentially going to become a tool for wolf hunters in the future. They will have locations and numbers in the pack. They have serious concerns about whether they want to continue participating in this program if that information is going to be used to hunt wolves.

4) Finally, they have a big concern with the permanent rule for December. If basing on sound science, why would the permanent rule be proposed during the season and not have all the information available since the season runs to the end of February? SMC requests that the permanent rule at least wait until after the season is over so all information can be utilized to make the best choice and best decision possible.

Mr. Miller stated the SMC has a significant amount of forest crop lands in their boundaries. It is not uncommon to see four to five individual, different bear baits per 40. If he was going to be a wolf hunter, he would go where the wolves are to increase the odds. SMC has that fear. It is evident and has been established specifically with bears. That is why SMC finds it to be very crucial to defend the wolf population. The consultation process started only recently. In the early phases of this, not all 11 tribes were consulted. There are 11 tribes and not four or five. In order for SMC to respect your concerns brought forward, SMC needs to be shown the same respect. In closing on behalf of SMC, he thanked everyone in attendance for their ear, the Board and DNR for all consideration given in this manner. To the Representative that spoke earlier, he is also an elected official. Like all elected officials, we are fallible. We sometimes make decisions that do not encompass all aspects and every concern in the best interest of our entire communities. He respects the efforts of the WI legislation. Sometimes, legislation is fallible and we have to go back. It is written on paper and not cast in stone. We are humans and sometimes we need to amend and make adjustments in order for things to evolve and progress in their stated fashion.

Discussion followed on whether SMC is happy with the boundaries in the amendment?

Mr. Miller stated this is a concession on behalf of the SMC. They have long since established and disagree with the provisions stated earlier about recognized federal boundaries as a point of contention. They do this solely with what they feel they can protect their wolf population, the core habitat of their wolves. That is their concession that was made in the map provided earlier. For the record, SMC's position is to township boundary and always has been and always will be. In this instance in order to get concession and compromise in their willingness to work with, solely for the wolf issue, SMC made this concession.

4. Ralph Fritsch, Townsend, representing WI Wildlife Federation (WWF) spoke in support of the proposed rule. He thanked staff for working so hard for implementing a very complicated and controversial wolf harvest season in a very short period of time. WWF recognized the great success of the state and federal Endangered Species Act in promoting the full recovery of the gray wolf in WI. He appreciates that the DNR has followed the recommendation of the WWF and decreased the proposed harvest success rate for the harvest of wolf. However, the proposed success rate is still higher than the state of MN and far higher than the actual success

rate of the Rocky Mountain states. WWF recommends that the Board adopt the MN 7% success rate. The WWF further believes that the proposed rule is still ultra conservative and will need to an insufficient harvest of wolves in WI. With the harvest is set at 201 statewide, the framework of the proposed regulation will likely lead to a total harvest in the range of 80-100 wolves which would lead to a minor decrease in the statewide population.

5. **Legislator Orman Waukau** spoke in place of **Gary Besaw**, Keshena, representing Menominee Indian Tribe of Wisconsin. He thanked the Board for the opportunity to speak today. The Menominee people are the oldest continuous residence of the state of WI, this great state they all call home. In their history, they came from five primary clans: bear clan, eagle clan, moose, crane, and wolf. Again, they are taught by elders that this is who they are. He is a bear clan. During white tail season, being a young man, he was always told by his elders, do not hunt or kill bear. Being a young man during deer season, he came across a big bear. He turns around and puts the scope on the bear's heart and presses the trigger. Click. Nothing happened. He then went back to hunt. After hunting, he looked at that shell thinking there was something wrong with it. He put the shell back in, fired, and bang it went off. Someone was telling him something, to respect what he was taught by his elders. Be respectful of what you are taught by your elders.

We look at the wolf as one of our primary clans. Not only in the form of hunting and gathering, but that wolf goes out and helps take care of the white tailed deer that this great state of WI is known for. It helps take care of the sick. It keeps a healthy herd. This is one of the reasons why the Menominee are opposed to wolf hunting. In effect, we are saying we will hunt our brothers and sisters. Menominee and the state of WI have worked together in partnership each spring as they have their annual sturgeon feast. This is one of the great success stories of a partnership. That is why we are all here. We are here to protect our natural resources. Each spring, thanks to the state of WI, they bring us sturgeon. We bring them back home because this is where they came many years ago. It was their spawning ground. They put them back in the waters and then we take them and have a feast. They have been very blessed to have the state of WI helping them celebrate as they honor the sturgeon as many people, the Menominee, people to the south, Shawano. Again, they look forward to working with state of WI. One of the best things we can do is to respect one another. In our case, the Menominee people, as with their other brothers and sisters out here, we look at them as our brother and sister. See you again.

6. **Dan Perotti**, Ironwood MI, representing self and Northern WI Houndsmen Association Club stated that there is no logical reason to start a conflict if the conflict can be avoided. The wolf season as proposed contains basically three points which are offensive to many of the groups who have worked to have the wolf season created. Their short list of concerns are: 1) the overlapping/concurrent running techniques for harvest: that is trapping and hunting simultaneously 100% of the time; 2) allowing cold weather/snow-trapping (late season); and 3) it is imperative to leave no room for an injunction as in prior attempts in the U.S.

Together hunters, trappers, sporting dog enthusiasts, livestock producers, hobby farmers, and others will stand strong against the artis. It is their recommendation that the season be "tweaked" to avoid any potential conflict and to sustain the solidarity we have created and enjoy the strength we have. He quoted a hunter "if my dog gets in a trap, we are going to have an issue; not only with the licensed trapper, but with the flawed law." (Handout)

**Dr. Thomas** asked Mr. Perotti what tweaking his club would want done.

**Mr. Perotti** stated changing the dates as follows: hunting only from October 15 – November 10 (3+ weeks); trapping/hunting from November 11 – December 25 (6 ½ weeks); and hunting only from December 26 – March 1 (9 weeks).

7. **Thomas J. Givnish**, Madison, representing University of Wisconsin-Madison as Henry Allan Gleason Professor of Botany and Environmental Studies. He stated that he believes the proposed kill rate of roughly 24% is too high and biologically unjustified. This is not the time to install an aggressive hunting policy that may endanger that recovery. He recommended an initial overall kill rate no higher than 10% and with permits no more than three times the proposed kill.

The proposed harvest does not use best available practices to ensure the persistence of wolves, which would be to establish refugia that are not hunted. Making the proposed Zones 1, 2, 3, and 4 no-hunt areas would still target heavy harvests in areas where 90% of livestock depredation takes place. Designating these zones as no-

hunt areas would make wolf numbers, genetics, and social interactions much more stable and sustainable over time, and exert downward pressure on high deer populations that hunters have been unable to control in recent decades.

The DNR must reduce the length of the hunt to reduce interference with population estimates made during the snow season.

The DNR must increase the transparency of its deliberations regarding the wolf hunt. Hunters are by no means the only constituency with an interest. He supports The Nature Conservancy's proposal that the DNR convene a group of experts to re-evaluate what a healthy and sustainable wolf population in WI would look like.

He then noted that the people of WI have been poorly served by a Legislature that has imposed its will on so many aspects of the proposed wolf hunt without input from the DNR and outside experts; at least beyond the bear hunters and their attorneys. He is troubled by the fact that several inhumane practices are being promoted in this first hunt – such as hunting at night, with lights, or with dogs and baits and traps. It will stain the reputation of the DNR and hunting in WI. **(Handout)**

Discussion followed on how WI has genetic diversity now and whether harvesting wolves across the entire landscape would have a genetic impact.

8. **Mike Brust**, Wausau, representing self and the WI Bowhunters Association (WBA) as President stated that WBA applauds this initial effort by DNR Wildlife to bring the wolf population to the established goal and believe their approach is credible, although overly-conservative to accomplish that objective. They believe the total harvest goal of 201 is too conservative, especially regarding Zone 5 and will never be approached anyway because the anticipated success ratio of 10% is not realistic based on the data from other states. The anticipated success rate should be 5% or less of the goal harvest with adequate permits issued accordingly. WBA believes Zone 5 should be managed as Secondary Range at least, or, perhaps more properly Unsuitable Range. This would raise the statewide harvest goal to 234 or 285 respectively. WBA believes it is time to manage wolves in WI based on the actual population and not an arbitrary minimum count of less than the total population. **(Handout)**

Discussion followed on public harvest and depredation.

9. **Howard Goldman**, St. Paul, MN, representing the Humane Society of the United States (HSUS). He represents 245,000 members in the state of WI. He stated that HSUS opposed the delisting and that wolves only occupy 5% of its historic range. Wolves are a public trust. They are an apex predator, play a very important role in natural ecosystems and are a symbol of the wilderness. There is no biological reason to hunt wolves. This is recreational killing. The population has been stable for 2 years without public hunting and trapping. Under the delisting, farmers/landowners can legally shoot a wolf predated on livestock and domestic pets.

The DNR has estimated that the illegal take may be as high as 161 wolves, an additional 84 wolves will be killed under depredation controls, 34 will die from vehicle collisions, for an estimated total of 480 wolves or 56% of the population. The population model does not factor in any disease events, it does not fully account for pack disruption from taking of alpha male or female and impact of stress on the packs from months of hound hunting. The model concludes that the tipping point is at 30% of human caused mortality (HCM). USFWS stated that HCM is the most significant factor in wolf conservation and is the one variable that this Board can address. The DNR's plan leaves no room for error. WI must do the right thing and protect the wolf.

**(Handout)**

**Mr. Bruins** asked Mr. Goldman for USHS's opinion as to how many wolves should be allowed to exist in the state of WI.

**Mr. Goldman** stated that the population will largely manage itself. The single most important issue to the state is depredations. Those would be addressed in the delisting and a focus on best management practices which are in place throughout the state.

10. **Bob Welch**, Redgranite, representing Hunters Rights Coalition (HRC) stated their support for the rule but wish the quotas were significantly higher. He thanked the Secretary and her staff for making this rule in an expeditious manner. He made it clear that the numbers in the statute, that are in the rule, that have been used by

everyone today, are the rules that were in the Wolf Management Plan produced by the DNR. That is what was used to get delisted. It was not someone else's number; it was not some former employee that came here today wishing it was higher. 350 was used to get the delisting, based on minimum count. If some day we get to real population numbers and confidence in those numbers, then and only then should we be looking at perhaps changing what the 350 is. There is a limit between the wolves peacefully co-existing with us and having problems. That is social carrying capacity. That is what we are managing to. Because of the legislation and the Chair's request that we do not address all those things today is a good one. The tools are in place to be able to manage wolves with a public harvest season, not based on emotions because you will hear a lot of that today, but based on science. Wolves will become a trophy species.

**Chair Clausen** asked Gloriann Klein, speaker #11, to the podium but she was not in attendance. He stated he would come back to her. He requested Corry White to give his testimony at the podium.

11. **Corry White**, Madison, representing self. He stated that the legislation forcing this hunt was premature and deeply flawed but constrained his proposals to the rulemaking at hand. The rules established by the DNR immediately upon the release of the Endangered Species Act (ESA) restrictions allow for property owners and owners of livestock to have much greater flexibility when addressing "problem" wolves. He requested 1) wolves living away from people and not causing difficulties for landowners be left alone, 2) the deeply flawed Wolf Management Plan population goal of 350 be discarded, 3) the hunt be much more closely targeted to areas where wolves have entered people's property and caused problems, and 4) wolf sanctuaries be established wherever wolf territory coincides with areas of no roads or few lower maintenance roads. Whatever inconveniences these proposals might impose on a hunt pale in comparison to the damage the hunt threatens to do both to wolf population dynamics, and most importantly, to our own ability to understand the relationship we share with these exceptional animals.
12. **Zoe White**, Madison, representing self. She is age 9 and a future wildlife biologist. She has learned about Aldo Leopold and Rachel Carson. Aldo Leopold learned early in his career about the importance of predators to the balance of nature. He went on to advocate for a respectful place in the human management of wildlife for larger predators that had mistakenly been considered "competition" for hunters in the past. We have a space in our state for wild animals to live with us. She feels badly for the people who have had their livestock attacked by wolves and believes it is right for those people to have more power over wolves. No hunt should go on where wolves are living in the heart of wolf territory far away from people. They should be entirely left alone. She requested the Zones should be adjusted so that hunting quotas in our wildest places be zero. They need sanctuary. All hunting should take place where people have had problems with wolves on their property attacking their livestock.
13. **Gloriann Klein**, Milwaukee, representing Wolf Info Now. She stated that the Governor's office reports 20 called in to support this bill while 898 wrote in to oppose this legislation. The wolf is wise, majestic, incomprehensible, misunderstood. She assigned each Board Member an assignment as follows: 1) Bill Bruins – Compensation. Farmers feel entitled to compensation from depredating wolves. What happens when hound hunters get more compensation than farmers or when the fund runs out. 2) David Clausen – Hound Hunting. Ban training hounds under the current rule, separate rules for bear hunting. Comply with state statues for canine fighting and cruelty to animals. 3) Preston Cole – Core Areas. Establish low harvest numbers in public lands, target problem wolves, reduce harvest to 10%, maintain integrity of pack structure. 4) Terry Hilgengerg – Baiting. Location – animals are territorial. Baiting alters behavior. Habituating a wolf with human food is dangerous. 5) Greg Kazmierski – Trapping. Hunter's code of honor. Where is the ethics in this. Ban clubbing of down or trapped wolves. 6) Christine Thomas – Zoning of harvest areas and numbers. Establish core areas for good wolf habitat and non-problem wolves versus mixed and ag zones which can have depredating wolves for lack of options. Create a refuge area with 9% harvest. 7) Jane Wiley – Tribal Lands. Generally protected due to treaty rights except the 2 townships in Zone 2 as part of the Stockbridge Munsee reservation needs to have same protection as the Chippewa and Menominee, including a 6 mile buffer zone. Killing 1-2 wolves would likely wipe out an entire pack. Do not condone this sloppy legislation. **(Handout)**

**Mr. Kazmierski** asked Ms. Klein how much her group has contributed to Wolf reestablishment in WI.

**Ms. Klein** stated their group is only a few months old. She has spoken from experience as an individual having

hands-on experience working with wolves both in WI as well as out west.

14. **Joe Koback**, Montello, representing the Wisconsin Chapters of SCI. They are thrilled the gray wolf is back. The population is not stable and is still exploding. Wisconsin has the responsibility to manage it. The landscape has changed. Even though his group would like to see more aggressive numbers, at the same time they do not want to be too aggressive either. They want the wolf to stay here in WI. They are supporting this just the way it is. Wisconsin has not had a season yet and need to get that data of what does work and what does not work. For this year, they would like to support this and next year work on the permanent rule and use this year's data. They would like to see higher numbers because the wolf is not stable. This year's harvest will not stop that.
15. **Ray Leonard**, Custer, representing Timber Wolf Information Network. He stated his understanding that the Board is quite limited in any adjustments to the Act and addressed some deficiencies in the proposed baiting rule. 1) Food conditioning – it is a mistake to expand on the potential of providing food rewards to wolves. It is impossible to totally prevent human scent at bait sites and wolves will quickly associate human scent with a food reward. 2) Enforcement – the proposed rule currently allows either bear baiting or deer baiting practices, or both. This will certainly provide challenges to law enforcement as wolf bait sites will look very much like bear or deer baits, after those seasons are closed. In addition, the rule prohibits substances that are toxic to canids, however, highly toxic substances like the artificial sweetener Xylitol cannot be easily detected in the field. If he could, he would tell his members to call in every bait site they encounter and make sure it is checked out to make sure it is a legitimate wolf baiting site and that it does not contain toxins. 3) Bear behavior – having bait sites available well into the winter months could potentially alter bear denning behavior. One of the triggers for denning is a lack of food. He requested that bait for wolf hunting be restricted to scent baits.  
(Handout)

**Mr. Kazmierski** asked whether Mr. Leonard believes there will be a lot of baiting with the limitation of what can be used for bait on wolves.

**Mr. Leonard** stated he did not know he could speak on that since this is new. He can see continuing bear bait sites that are on the landscape already.

**Mr. Kazmierski** believed primarily the provision was put in the bill so if someone was hunting deer and they were over a bait site that they would not get busted for hunting wolves over a bait site when they incidentally took the wolf during deer hunting or other pursuit.

**Mr. Leonard** stated he was more concerned with bear sites that would continue on after October 9. Wolf sites would look just like bear bait that would be difficult to enforce.

16. **Scott McAuley**, Wisconsin Rapids, representing Wisconsin Trappers Association. He stated they support mandatory trapper education. If you are going to trap a wolf, you need Trapper Education. They teach ethics, trapper ed, the right tool for the right animal. You are trying to regulate ethics with the 7" trap rule. You are never going to regulate ethics. You can make the rules, but no one is ever going to follow them. There are a couple grey areas in here. Wolf season, according to Act 169, goes from October 15 to the end of February. That is the canine season. If he is wolf trapping the first 3-5 days and he catches a coyote, what is he supposed to do with it? You are putting the trapper and law enforcement in a position that do you let the landowner go and the landowner wants it dead? He suggested the coyote and fox seasons run concurrent with wolf season and it be a few days in October and a full two weeks in February. As for the 8" trap restriction, there is not going to be that many trappers out there using the bigger traps. When the ground gets frozen at the end of November/December, you might need a bigger trap to come up through the frozen snow and dirt in order to get a good catch on the foot of that animal. Keep it simple. You can add to Section 21: If you are wolf trapping, you are restricted to the 7" trap. They look forward to working on the permanent rule with everybody.  
(Handout)
17. **Jodi Habush Sinykin**, Milwaukee, representing Midwest Environmental Advocates. She stated the DNR has offered no peer-reviewed scientific evidence in support of their quota numbers, an omission all the more concerning in light of the DNR's chronic inability or unwillingness to control over-hunting and over-trapping of

our state's wildlife over the past fifteen years, especially with regard to quota exceedances for furbearers year after year. DNR's inability to control excess harvests provides another reason that greater caution should be exercised regarding the quotas proposed for this year's hunting and trapping season for wolves. Quotas are only as good as the DNR's ability and resolve to enforce them. The first season quotas should be reduced and DNR directives to limit harvest zones to those portions of the state experiencing livestock depredation problems, at least until such time as the state's outdated Wolf Management Plan is revised to take into account best-available science and assessment of the indiscriminate impact of hunting and trapping on wolves' social structure and long-term viability. She then joined others today asking that the Board direct DNR to begin revising the 1999 Wolf Management Plan and to delay permanent rule making until the management plan updates have been completed.

She then drew attention to the rules regulatory void concerning the use of dogs as a method to hunt wolves. Other than prohibiting wolf hunting with dogs at night, the DNR has failed to impose the full array of reasonable restrictions necessary to keep Act 169 statutory directive that dogs be used to trail or track wolves or to curtail unsafe proximity between dogs and wolves, certain to lead to animal fighting, grievous injury, and death to both dogs and wolves. The scope statement failed to encompass dog training as a matter to DNR regulation. Without the ability to impose reasonable restrictions on the training of dogs to hunt wolves, an activity which can be conducted for much of the year including the 4 ½ month hunting season, there is no way DNR can enforce the regulatory parameters needed to prevent irreparable harm from taking place. Hunters violating any proposed dog hunting rule will claim they were merely training their dogs and therefore not obliged to comply. **(Handout)**

~~XX. Peter David, Odanah, representing Great Lakes Indian Fish and Wildlife Commission (GLIFWC) as Wildlife Biologist (Moved to last speaker) MODIFIED~~

18. Al Lobner, Milladore, representing the Wisconsin Bear Hunters Association. He stated his initial reaction to the proposed plan was that at this rate, they would never get the wolf population under control. His attitude since attending the Black River Falls meeting has not changed. This population needs to be reduced. Another concern is the goal that was set for this season. He does not remember 350 as being the minimum population goal. This needs to be corrected to have a socially acceptable wolf population. Canine diseases can diminish a population quickly when members of the species have constant interaction with other members of their species. This concept is nothing new and he believes is being ignored to allow for a so-called diversity within the ecosystem. There are some that feel a wolf population has built up resistance to the parvovirus since it was found in wolf populations in the 1980s. Do not be fooled by that assumption. That outbreak reduced the wolf population from 25 wolves down to 14 in 1985, as documented by Adrian Wydeven. Keep in mind we will never be able to vaccinate the entire wolf population this time. Remember the quotation from President Theodore Roosevelt "In a civilized and cultivated country, wild animals only can continue to exist at all when preserved by sportsmen." The affluent people who testified today who protest against all hunting and consider sportsmen as enemies of wildlife, do not understand. In reality the genuine sportsmen is by all odds the most important factor keeping the larger and more valuable wild creatures from total extermination. **(Handout)**

Mr. Kazmierski requested clarification on the concern about training wolf hounds year round. He asked Mr. Lobner whether it would be his understanding that the leash law would also include wolf training as well as coyote training.

Mr. Lobner stated that to his knowledge, the leash law includes all dogs and not just hunting dogs. They cannot run loose in the northern 1/3 of the state where the wolf population is at.

Mr. Kazmierski stated there have been concerns about trap sizes and traps being out there during dog hunting. He asked Mr. Lobner whether this was a problem.

Mr. Lobner stated he had heard occasional instances but for all intended purposes, no.

Chair Clausen requested DNR Enforcement and Science Administrator, Tim Lawhern, to clarify the leash law for May and June and on state lands.

Mr. Lawhern stated that the information provided earlier is accurate. The northern part of the state must have

dogs on a leash at all times except during the hunting season. It does not matter what kind of dog, whether it is a bear dog, coyote dog, bird dog, or pet. If you are in the southern part of the state, it is regulated during certain seasons as to when you can have your dog on or off a leash.

**Chair Clausen** asked whether there is a prohibition in the process of training your dog in the northern part of the state in May and June and on DNR lands from approximately April 1 – July 1.

**Tom Van Haren**, DNR Warden, stated that Chair Clausen was correct. In the northern restricted zone (25%-30% of the state), in May and June, you cannot train dogs on free roaming wild animals, regardless of species. In July and August, you can train your dogs on bears. The leash law part of the dog training rule only applies to DNR lands. It does not matter where you are in the state. From April 15 – July 31 if you want to have your dogs on DNR managed lands, they must be on a leash. This is statewide.

19. **Mike Wiggins**, Chair, and **Joe Rose**, Bad River Voigt Task Force Representative, representing Bad River Band of Lake Superior Chippewa.

**Mr. Wiggins** stated his name is Rising Sun and he is of the Eagle Clan. The wolf is a very powerful symbol of what little wilderness we have left. He shared their traditions regarding their relationship with the wolf. He summarized a small portion of their creation story. They talk about four orders to the creation. The Great Spirit created everything in the universe. The first things that came were of the physical world. Then the next order was the plant world. The next order was the animal world, and finally the human world. He skipped the first three orders. According to their traditions, the Great Spirit took soil from the four corners of Mother Earth – the four cardinal directions. Starting first in the east, then to the south, then to the west, and then to the north. This soil is taken into sky world and placed into the sacred shell. The Great Spirit breathed life into the soil creating original man. He lowered original man to meet Mother Earth. The first steps taken on Mother Earth, man tread very lightly out of love, honor, and respect. There was a sound that was heard by the creator even before creation occurred, that sound had a rhythm. After everything was created, the Great Spirit set everything in motion. We have all the natural rhythms. We have day and night. We have four seasons, the tides flow, the moon comes, the heart beats. That was blueprint for all natural rhythms that set everything in motion. Great Spirit asked original man to visit all places and things. He began his walk about. While traveling, he met the wolf. Since the wolf was of the third order, he had been here much longer than man. Wolf became the guide. In time, blood brother to man. They were inseparable companions. Man thought he finished the responsibility given to him and returned to the Great Spirit. Man and wolf stood in presence. The Great Spirit spoke to both of them. You are both much alike. You will take a mate for life. Your social order will be very complex. The wolf was given the wolf pack and man was given the clan system. Both will make your living by chase. Both will be excellent hunters. Man expressed loneliness and noted that the animals occurred in pairs. The Great Spirit took soil from the four corners of Mother Earth and breathed life into the soil of Mother Earth and created woman. Now that man had a companion, the Great Spirit told them from this day forward, even though brothers, you will walk separate paths. To wolf, if man approaches on your territory, you will retreat further and further into the wilderness. It was prophesized that in the age of the 7<sup>th</sup> fire, the wolf may no longer have a place to retreat. What he was referring to at that time was wilderness. If you no longer have a place to retreat, you will soon pass out of existence. And you man, if your brother passes out, you will soon follow. The Great Spirit was not referring to just the wolf, but everything the wolf represents. When wolf passes, humans will follow.

Our destiny is related to the destiny of the wolf. We were put here to live in harmony and balance with all corners of creation. We were put here to live in harmony and balance with all corners of creation. Complex because of the countless ecosystems and their relationships to each other that result in environmental integrity. And so, we have a very important relationship to wolf and his time as human approach the fork in the road in the day of the 7<sup>th</sup> fire. One fork in the road was a hard surface and the other a more natural path. We see the hard surface today as that vast lane of technology pollutes and destroys. They see the other path, a more natural path. A path that will result in restoration of the natural balance. Some belief systems refer to as Armageddon and the other a more Utopia message. In the prophecies, even though we are living in the 11<sup>th</sup> hour of a very serious environmental crisis on a global basis, there is hope. Their people were given a gift – loosely interpreted it means medicine. Along with the gift goes a tremendous responsibility. That responsibility is to share knowledge and wisdom of how to live in harmony and balance with all others. So they say that human beings come in all four colors represented on the medicine wheel - red, yellow, black, and

white. In this age of the 7<sup>th</sup> fire, new people will arise. They will turn and look back, and retrace footsteps. Wolf will pick up the medicine bundles fallen by way side and go to the elders for an interpretation of those teachings. The bundles will be taken underground for generations due to persecution. They are now beginning to see light of day once more. They say a new paradigm will come into being during the age of the 7<sup>th</sup> fire. In terms of money or materialistic gain, our political power or control, or any of those egotistical things, true worth will be measured in terms of clean water, fresh air, and pristine wilderness, and all of those things represented by the wolf.

Mr. Rose stated his Elder set the context and foundation through which Ojibwa world view is rooted as it pertains to the wolf bill and the hunting of wolves in general. Collectively, that view and the position of tribes will be put forth later in the Great Lakes Indian Fish and Wildlife Commission (GLIFWC) testimony. He spoke today not so much on the greater legislative points and issues surrounding the wolf hunt as it pertains to the rest of the state of Wisconsin but more from inside out approach as a sovereign nation. He will talk through the filter of the wolf packets that call the interior of their reservation, home. From that perspective, he shared that they have four wolf packs on their reservation. One of the things they talked with Secretary Stepp and DNR officials about earlier on was the importance of their tribal management authority as pertaining to the boundaries of their reservation. His Elders' comments about their values that pertain to wolves is alive and well within their homeland and the notion of hunting occurring within their boundaries was a very difficult proposition to reconcile.

They put forth the notion of leaving their management and wolf packs to their own control and authority. He acknowledged their thanks for that recognition. For their perspective, through the notion and filter of their wolf packs up north on the Bad River Reservation, the boundaries of their reservation need to be extended in spirit. They talked about that also and reasserted their desire to see a zero quota zone extended around their reservation for about 6 miles. It is their position that this request is very reasonable. That request is rooted in science, management, and notions of sustainability for the wolf packs that call their reservation home. They have studied their wolf packs. They are working with Animal and Plant Health Inspection Service (APHIS) and other agencies to get a handle on the home range of their different packs, to get a handle on depredation and other different types of things occurring within and around their reservation. There has been a nice cooperative effort to that end.

Their telemetry studies have shown is that their wolves do not honor the boundaries of their reservation and they do cross over into areas. The outer range of where their packs roam has been established. That 6 mile buffer, zero quota zone we are talking about would put integrity into the notion of truly protecting their wolf packs within their reservation. The radio telemetry, the amount of movement they see off their reservation is all contained within their proposal in their letter to the NRB/DNR. Their boundaries, as were established, along delineated roads for ease of identifiable boundaries. It also encompasses an area where they are looking at, at least along their western border and southern border, primarily private property owners, a lot of farms. From a management based perspective, they already have harvest goals readily accessible for the issuance of depredation permits. Depredation permits would cover a lot of the zero quota zone. There are other perspectives too like the beautiful black wolf that was killed on U.S. Highway 2 trying to cross within their boundaries. There are other harvest and accidental kills and things of that nature that will occur. On the eastern boundary, there is public land and some hunting opportunity there that would come into play. When you look at the buffer zone they are requesting and the protections it would insure from a sustainability aspect for their wolf packs, that six mile buffer would represent a very insignificant hindrance in terms of hunting opportunity and access to hunting opportunity. In the big scheme of things in terms of what your goals area statewide, that zero quota zone is minute and in their opinion will not be a significant hindrance to Wisconsin hunters and how they go after wolves.

The other thing he shared is when you look at how small their wolf packs are and their range, the harvesting of an alpha or omega and the impact on the social perspective on that pack really concerns the tribe. The kind of disruption which could affect small packs is one they fear that sustainability of that pack in general could be jeopardized. As they leave their reservation boundaries, they are trying to insure their safe return, unless engaging in activities around farm lands that is negative. Ultimately, the sustainability of these wolf packs is such that they believe in the long wrong, although contrary to their value system, that through social displacement and social order of wolf packs, that through displacement, as young males come up and are kicked out of the pack and through social displacement in general, that ultimately by sustaining their wolf packs they will contribute to the betterment of hunting opportunities on public land areas around their reservation. That cuts to the core of what he heard before as far as the spirit of hunting, the spirit of outdoorsmen, the spirit of



harvesters or sportsmen as to what they are striving for.

Meanwhile, within that small sovereign nation, management of their wolf packs according to their value system, there are other techniques besides lethal means to do that. Is this unprecedented? No. Zero harvest antlerless quotas are better established in certain zones from a deer hunting perspective. When he thinks of the imaginary line between the mouth of the Bad River whether it empties into Lake Superior and the arbitrary point on Michigan Island thereby establishing a line that delineates a fish refuge. He sees the same spirit in the deer hunting perspective and that fish refuge perspective that is essentially in their request to direct the DNR to work with them to establish this zero quota zone around their boundaries. From a management perspective, all of the outcomes can be met at the state level through depredation permits.

He could talk about the lack of consultation that could accompany testimony such as this, but more importantly, they still have time to work together for a win-win situation. Again, that is in the context and framework of what is inherently an oppositional approach and contrary view to recreational hunting. To summarize, they ask the Board to direct the DNR to work with them on the zero quota zone. Their team is ready to do that. They already have some cooperative work established that will help from a science perspective. That is essentially what this is rooted in. Sustainability.

Mr. Kazmierski stated there looks like there is a lot of open agriculture land in the buffer zone the Tribe is asking about. He asked what the consensus of the private land owners in those areas and whether they are willing to go along with what the Tribe is requesting.

Mr. Rose stated that when you look at the way the zero antlerless harvest is put forth in certain zones from a deer hunting perspective, that acknowledges that there are still opportunity for harvest and access that can be found to accomplish that goal of taking an animal. He did not know the consensus would be from private landowners within that buffer zone other than to say that within a short drive from zero quota zone are tremendous tracks of public lands and forests that can be hunted. He also acknowledged that there are no limits on harvesting from a depredation standpoint.

Mr. Rose then invited Members of the Natural Resources Board to the Bad River Reservation and to take a trip around the waterways still stands. Mr. Moroney is invited also. He thanked the Board for the gracious dinner and social gathering on June 27 at Crex Meadows.

20. Dave Hochtritt, Pickett, representing self. He requested to be removed from the list of speakers.

Chair Clausen asked Laurie Groskopf, speaker #21, to the podium but she was not in attendance. He stated he would come back to her. He requested Nancy Warren to give her testimony at the podium.

21. Nancy Warren, Ewen, MI, representing National Wolfwatcher Coalition as Great Lakes Regional Director. As their name implies, their supporters enjoy viewing wolves, finding their tracks, and hearing their howls. They are an all-volunteer organization dedicated to promoting positive attitudes about wolves through education. They believe their past comments have been ignored throughout each step of the process and it is their hope that the Board will now give them serious consideration. This proposed rule takes an overly aggressive approach to wolf management; it fails to take into consideration input from all stakeholders and the general public and fails to fully address key issues.

They asked that the Board reject the rules and regulations put forth because the harvest quota of 201 wolves must be substantially reduced. Less than 10% of the wolves are responsible for livestock depredation. Zones must be established to protect wolves in areas of prime habitat that have not caused livestock depredation. Zones and quotas that specifically address depredation should be created. For example, Zone 1A, which identified areas of high depredation should not have been eliminated. DNR should establish buffer zones around tribal lands. The Wolf Management Plan must be updated to reflect the biological carrying capacity of 700-1,000 wolves. Baiting must be limited to liquid scents. Howling must be prohibited as a means to lure wolves. Training season for dogs must be prohibited while wolves are at den and rendezvous sites. Prior to releasing a trapped wolf, the incident should be reported to DNR so that the wolf can be collared whenever possible. DNR must prohibit the use of clubbing as a method to dispatch a wolf. DNR should require that hound hunters take responsible actions to minimize conflicts. Do not compensate \$2,500 for dog depredations if hunters continue to utilize the same areas where wolves are known to kill dogs. DNR must develop a

strategic plan to address enforcement, especially the use of bait, night hunting, and hunting with dogs. DNR must work with legislators to revise Act 169. (Handout)

22. **Laurie Groskopf**, Tomahawk, representing self. She stated that the framework presented is custom designed to keep the wolf population at the current level. On page 9 of the green sheet package, it does state that the literature shows that 23% - 29% harvest will not result in any reductions. In her way of looking at this, 38% - 50% harvest would be needed in order to start the reduction in the population. The social carrying capacity was never dealt with. There is no mention of it in the rule. The biological carrying capacity many people feel is the same as it has been. Her question is it that Wisconsin needs more wolves than Idaho, Montana, Wyoming, and the upper peninsula. Several years ago she began an effort to organize citizens who felt like they were not able to voice their feelings and worked with a number of county boards on resolutions. She knew there was some dissent faction out there but was extremely surprised to see the extent and depth of it. She then read through the main counties she dealt with and their votes on each resolution. She said that if you can get county boards to agree on anything, then the fact that these county boards and the votes they saw, shows the depth of the problem up there. Like Dr. Kroll said, we need to look at what the people want. It is very important to them to get the wolf population brought down significantly. (Handout)
23. **Doug Moericke**, Waupaca, representing self. He stated that in 1997 in Hayward he spoke about maintaining habitat between corridors connecting northern WI wolf habitat and the central forest. This was to encourage genetic diversity for the survival of the timber wolf. In 2004 at River Falls, he testified about developing a wolf season. He asked the Board to proceed on the hunt cautiously. The proposed wolf hunting season is too long because it enters into the breeding season. Hunting pressure during the short breeding season is a potential limiting factor affecting wolf numbers and survival of a stable population. Enforcement of all the rules and regulation of the wolf harvest is arbitrary at best given the vastness of the wolf harvest zones proposed. In regards to the proposed zones, he stated The Public Domain Act incorporates that federal and state lands are owned by all. The emergency Board Order simply satisfied entitlement of a select segment of the general population. Either apathetic or uninformed WI residents are not knowledgeable of the shortcomings of this rushed bill. The zones proposed on federal and state lands do not guarantee refuge areas from the hunting pressure of such a long season. Reimbursement for hunting dogs needs to change based on this fact: He was not aware of any other hobby that is reimbursed by federal or state funds. The WI idea developed by the University of WI back in the late 1800's was to ensure that the majority of the WI public benefitted from sound science and research. WI's environmental teachings of the great icons should influence the final decisions that are decided here today. (Handout)
24. **Margaret McClure**, Madison, representing self. She spoke in opposition to the proposed rule. She presented a gruesome story of a trapped wolf. The story represented mankind at its most remorseless. At the end of her story, the hunter/trapper killed the wolf in a beastly fashion. (Handout)
25. **Gregory McClure**, Madison, representing self. He stated they moved up here one year ago from New Mexico where they dealt with their own wolf issue and introduction of the Mexican gray wolf. He offered a few comments and observations. There are strongly held beliefs about the wolf and the fabulous gift that WI has been given by its reintroduction. He grew up in a hunting and trapping family. He hunted bear and coon with dogs.  
He opposes trapping wolves and hunting them with dogs. He is concerned with trapping and the indiscriminate selection of an animal. With respect to a wolf pack, you can certainly disrupt its social structure if you happen to trap an alpha male. By trapping a pregnant female, it would interrupt the breeding season by running the trapping season too late. Trapping should not be part of a depredation process. You cannot select the wolf that is a problem wolf by setting out a trap.  
Harvesting in general is an interesting way to describe the process. Arbitrarily setting a 350 number based on the 1999 figure is a bit of science that needs to be reevaluated. Science is not fixed. It is not static and evolves over time. The 350 number should be reevaluated. This group needs to spend more time working with tribal entities and needs to be continued moving ahead. One thing that came up in the west in terms of dealing with wolves is a change in ranching and farming practices. He has not heard a lot about that and was wondering if that was not something that might need to be looked at more fully. As an example, the fate of carcasses on farms, running sheep with minimal amounts of dogs and human contact is another way to set up a situation to create a problem. (Handout)

26. **Lee Fahrney**, Hollandale, representing WI Conservation Congress (WCC) as Executive Committee Secretary. He stated that WCC has long had a position supporting the return of management of the gray wolf to the state and the implementation of a harvest season when the population was sufficient to sustain such. They are highly supportive of the 2012 wolf hunting and trapping season. The WCC Wolf Committee approved the DNR's proposed season structure, zones, and implementation plan that was presented to them on June 9. However, the committee is concerned that the proposed harvestable quota is too conservative and would like to see the quota set at 300 animals, exclusive of tribal harvest and depredation permits. This would not jeopardize the viability of the wolf population that is well over two times the management goal of the species. The goal of 350 limits should be the upper limit of the social carrying capacity. Biologically, they believe that wolf populations beyond that target figure are having a negative impact on other wildlife populations and their ecosystems. They get a lot of feedback from their delegates and from the sportsmen's organizations. There is a noticeable impact on other species, most notably white tailed deer. They have seen declines in the deer harvest in the northern part of the state. They look forward to the data that will be gathered this first year and working with the DNR. WCC wants to be involved in all of the decision making that takes place. **(Handout)**
  
27. **Lynn White**, Clintonville, representing self. She first became involved with wolves back in the early-mid 1980's when she was a grad student in Natural Resources at UW-Green Bay. She began contributing to the DNR's Endangered Resources program through the tax check off and the wolf plates later in the 1990's. She and her husband still have them today, despite that it costs them over \$100 for each of them each year. She knew these funds would help pay for depredation of livestock and that that was fair. But then she heard hunters were sending their dogs into harm's way despite being informed by the DNR of problem areas and the dog hunters insisted on being compensated. This is a good example of a use and abuse of our tax dollars.  
She did not think killing 24% of WI's population is conservative. She is especially opposed to killing of 29 out of 35-40 wolves in Zone 6. There are few, if any, reports of depredation in this zone. This killing is for fun. Do not use livestock depredation as an excuse to have a hunting season on wolves. A subsidized compensation program is in place. In six months, with no hunting season, this has already eliminated 39 wolves. Why a quota of 200? 160 wolves with no documented history of problems will be allowed to be killed for the fun of it. She opposed the expansion of baiting from scents. She opposed authorization of up to five depredation reimbursements for calves without actual proof of kill. She respects the Native American's request for buffer zones around their reservations. **(Handout)**
  
28. **Patricia Randolph**, Portage, representing Wisconsin Wildlife Ethic. Submitted comments were 20 for the hunt and 898 against. The system is deliberately stacked against the majority of the citizens. Legalizing cruelty invites torture. Hunters are documented in shooting the back legs, snaring, and trapping wolves, then setting dogs on them. Hunters will kill wolf pups in front of their parents or use their cries to lure them. They have dragged injured wolves and coyotes in neck loops to encourage dogs to attack. This is encouraging the worst sadism and it will be taught to children. These hunters have no back tags. Mandate front tags then. Warden staff are inadequate to monitor this. This shames our state and will not be forgotten. Boycotts of Wisconsin tourism and products are active on facebook. Hunters are on a major push to consolidate their exclusive power in law against the rights of humane citizens' participation. We have a right to govern the billions of dollars of land we buy and our wildlife under the Wildlife Public Trust Doctrine. The money to fund DNR wildlife management is structured on killing license funding. The Natural Resources Board has 4 of the 7 members mandated to represent hunting and farming to assure their control of wildlife for killing. 80 years of the Conservation Congress so-called public election privatized to 5,000 avid killers of wildlife. This is a corrupt system. **(Handout)**
  
29. **Richard Thiel**, Tomah, representing self. He retired from the DNR in 2011 and is one of five people who served on both the DNR's 1989 Wolf Recovery Plan and the 1999 Wolf Management Plan. He urged this Board to direct the DNR to immediately commence the timely revision of the 1999 Wolf Management Plan for these reasons: The Assembly Natural Resources public hearing held in February 2012 with authors Representative Suder and Rivard stated repeatedly that Act 169 is based on the WI Management Plan. The DNR's plan is 13 years old. DNR plans generally have a 10 year horizon. The DNR's existing plan emphasizes the intended horizon on pages 4, 8, and 28. A 2006-07 addendum was approved by Administration in August 2007. It substantiated much of the 1999 plan, made a few changes, and among other things that the population goal be revisited. In winter 2010-11, the DNR Wolf Science Technical Committee actually began a review of the

population goal. Options circulated amongst stakeholders that include a numerical goal with one emphasizing a human conflicts management focusing on population control using wolf removal by government agents, landowner shoot permits, and some as yet to be prescribed public harvest, as its management tools. Unfortunately, administration called off this exercise and the 1999 Wolf Management Plan remains in place, including its goal.

How was the 350 wolf goal formulated and was it based on pure science as asserted by some? On Page 16 of the plan, "this management goal falls about half way between the delisting level of 250 wolves and the perceived biological carrying capacity of 500 wolves for the state. During the review of the second draft of the wolf plan, of persons commenting on the population goal, 38% supported the goal, 38% felt it was too small, and 24% felt it was too high. Therefore, the goal seemed a reasonable compromise between population capacity, minimum level of viability, and public acceptance. The science in this section refers to the figure of 500 and not 350. For the 500 number, GIS analyses were performed with the wolf population demographic data for WI's wolf telemetry project at that time. They cannot exclude the possibility that a population of 300 to 500 wolves may decline to a point that relisting will be necessary. He emphasized that harvest was not part of the formula because it was not part of the plan because the Natural Resources Board took it out. He respectfully urged the Board to direct the DNR to revise the Wolf Management Plan beginning immediately. The Wolf Science Technical Committee should integrate wolf population goals, wolf management zones, and as noted in his handout. **(Handout)**

30. **Norm Poulton**, Tomahawk, representing Northwoods Alliance as Board Member & Wolf Issue Liaison. He stated he is very much against this wolf plan in the way it came down. He is also a member of the Timber Wolf Alliance of WI, the International Wolf Center in MN, and a volunteer tracker for over 17 years. He is very concerned with the trackers they are losing because of this type of plan that the politicians came up with. We do not need this plan, particularly this type of plan that was dreamt up by the anti-wolf folks and passed by the legislature. None of the wolf biologists were consulted about this. This was all done by legislators. WI loses 25% of the adult wolves each year. This is verified. They are lost to diseases like sarcoptic mange, canine parvovirus, and others. They are killed by cars and sometimes wolves kill other wolves other territorial disputes. When they are off the endangered species list which they are now, Wildlife Services has the authority to kill wolves. Farmers can shoot wolves attacking livestock. Wolves' acclimated to human beings can be killed and wolves are illegally shot by people. They found around 25 wolves last year and that is only what they found. How many were really shot they do not know.

He stated that he has a real problem with the 350 figure. This is not the biological carrying capacity for wolves. His understanding is 800-1,000 wolves. This is what we should be going by. This 350 figure comes up again and again and it does not have any real basis. He is very upset with the way this whole plan came down. This should have been done by wolf specialists, wildlife biologists, people that know something about the wolves. He is concerned about what they call a public carrying capacity because for a lot of the anti-wolf folks, this is the capacity. Look at the bumper stickers. They don't say 350 wolves do they? They say "no wolves." Do not listen to these types of people. Listen to the people that know something about the wolves. This is ridiculous and he feels terrible about this. Someone had mentioned about the loss of deer. After the deer season was over, they still had 1.4 million deer in the state of WI which was 40% more than the goal. A wolf will consume 18-20 deer each year. The reason I use the word consume, is that wolves are also scavengers and feed on dead deer. They are not having effects on the deer herd. **(Handout)**

31. **Will Stahl**, Neenah, representing the John Muir Chapter of the Sierra Club. He stated as caretakers of their natural heritage, all Americans have a shared responsibility to protect wildlife and wild places for future generations. The quotas and rules proposed by Act 169 are out of step with both public opinion and science. 87% of people believe the wolf is a vital part of our National Heritage. Wisconsin would be the only state to allow wolf hunting with dogs, which public opinion is largely against. The quota allowed is 57% human caused mortality to a species removed from ESA protections only six months ago, in addition to existing 75% mortality in pups and 25% mortality in adults. This plan and rules have not been peer-reviewed and both DNR and NRB spokespersons have commented publicly they "do not know" what the effects on the wolf population will be. Despite recent research no refuge areas have been proposed leaving core populations which have no history of chronic depredations, vulnerable to the destabilizing effects of hunting and trapping. In the DNR survey, a greater number of respondents favor a lower or zero quota as opposed to a higher quota. More respondents were opposed to the Act 169 rules concepts than those that favored them. The DNR mission to reduce the wolf population implies the 350 goal which was never intended as a maximum population in the wolf management

plan, and only as a minimum. It is not best biological practice to conduct so aggressive a cull before the additional effects of the recently enacted depredation control measures are known.

Additionally, their members oppose recreational trapping. Wolves are essential to a truly healthy ecosystem. Helping maintain healthy populations of deer and other game animals, preventing over-browsing, restoring aspen stands that benefit endangered game and song birds. Vehicle collisions and other damage by deer and elk are reduced in areas where wolves are present. Act 169 plan does nothing to address public misperceptions about wolves, campaigns, and misinformation about wolves, or public understanding of the value of predators to the ecosystem. Our responsibility to protect wildlife and wild places for future generations tells us to manage in a fashion that considers all lands and wildlife that use them. WI's natural heritage forged the understanding of leaders like Aldo Leopold and John Muir who saw that our imperfect understanding of natural balances in a healthy ecosystem drastically affects those complex relationships. Leopold and Muir understood that we must treat lightly on earth, leaving wild places and wildlife untouched by our presence as possible. **(Handout)**

**Ms. Wiley** asked Mr. Stahl what he is recommending.

**Mr. Stahl** stated that depredation controls be allowed to remain in place and that the quota be reduced greatly or eliminated. At this point, we do not know what the effect on the population will be on these kinds of quotas. We heard someone speak earlier about 39% collapse in the population several years ago. If we have such an event follow this wolf hunting season, we would have very few wolves left. The idea is we are supposed to have a minimum of 350 based on the 1999 plan. The actual carrying capacity as the gentlemen just stated is much higher.

32. **Rad Watkins**, Hazelhurst, representing Timber Wolf Alliance (TWA). TWA supports a harvest based on sound science, research, alongside public input and public involvement. They suggest a few tweaks to this rule in order to make it a valid plan. The TWA does not support reducing the wolf population to 350 wolves. To quote the representative that stood before them this morning, we must use the best science we have before us. We are not doing that. That is a fact. Science was not used. TWA strongly recommends the plan be updated so it can act as a guide. TWA supports the low range of the DNR's original quota of 142 wolves, understanding that there will be additional wolf mortalities such as pup mortality, poaching, road kill, mange, and other diseases. Wolf mortality rates are dynamic and can change quickly as local populations and pack sizes decrease. Hence, a more conservative harvest in year one's emergency rule makes sense. They understand some areas are not suitable for large populations of wolves because of the high density of people living in these areas or due to the high level of agricultural/livestock activity. These locations may be appropriately labeled "unsustainable" and the high percentage of culling at the low end quota range considered appropriate. They support DNR's management strategies to reduce wolf populations in these areas outside of the reservation boundaries. They support low or no quotas in primary wolf range where numbers are beginning to stabilize. Most conflicts in these zones are caused by people training or hunting with dogs. Public harvest or depredation control actions are not likely to reduce these conflicts.

TWA has concerns with the baiting of wolves for hunting and trapping. It could lead to greater habituation of wolves to humans. A rule designating that only scents be used to bait wolves may be the more responsible way to go. They are also opposed to the use of hunting with dogs, which is part of the legislation. They asked the Board make special recommendations for rules that say no training with no dogs outside of the October – February season. If you want to give hunters a lasting recreational opportunity, this quota is way too high. **(Handout)**

33. **Scott Meyer**, Gleason, representing United Sportsmen of Wisconsin (USW). USW is not in agreement with a harvest goal of 201 wolves. It should be more aggressive. This is an emergency rule and would hope as we work towards a permanent rule that the emphasis be on management of wolves to a 350 goal. He has been involved with the wolf de-listing since 1999, spent time on the wolf stakeholder committee, was listed as an intervener in the last federal lawsuit, and spent more than 8 years with federal and state attorneys with regards to wolves. There are several things which he noted today. We need to remember that the gray wolf is recovered as a species and now we need to turn to the management phase. The USFWS has used the current WI wolf management plan, which is recognized as Cadillac plan in the U.S., and was what the experts based their delisting on.

The premise of federal delisting is whether we can still afford protection of the gray wolf. The answer is yes. Does the bill and rule afford protection? Yes. It allows the DNR to set harvest levels and permit numbers and zones. In the federal final delisting threat analysis the USFW stated the DNR is committed to maintaining a

wolf population at 350 wolves outside the Indian reservations and no harvest would occur if the population fell below 350. Again, they have afforded protection for the gray wolf. The state also has a listing process which if the population would fall under 200, they would be listed at a state level. This is based on the current wolf management plan. We need to continue to follow the plan for at least 5 years while the USFWS monitors our progress. At a goal of 350 wolves we are 3 times the number as required by federal law for delisting. Depredation costs at 350 wolves in 2005 were about \$65,000 and were more socially tolerable. We can manage wolves in WI using public harvest with afforded protections as required by law at 350. He has seen written science papers and testimony suggesting raising goals and opening the wolf management plan. He would encourage the Board not to entertain this idea because this is what will open them up to another lawsuit. We are basing it on the current wolf management plan.

34. **Melissa Smith**, Madison, representing Stop the Wisconsin Wolf Hunt as Executive Director did not testify.
35. **Annette Olson**, Glenwood City, representing self. She along with her family are farmers in St. Croix County and have lost animals due to what they believe, wolves. Their farm is a small family owned business, the bottom line of their operation is significant. Every opportunity is examined where profit or loss may occur. Also, because their operation is small, the animals they raise are actually viewed as just a dollar sign. Some of them are viewed as pets. All of them are always viewed as investments that we must protect and they are out property that we are responsible for. It is difficult and potentially dangerous to walk upon a tortured carcass of a newborn calf with its mother still circling and nudging it, still trying to protect it. It is a scene that infuriates a farmer. Knowing that we cannot build fences that can keep wolves and other predators out has become a reality.

Small farm operations such as hers have taken to buying, feeding, and carrying for another form of livestock for predator control. They place donkeys in every pasture that they own so that predators such as the wolf will be kept out or driven out before any damage can be done. Since she has used these animals for predator control, she has not lost an animal due to depredation.

It is an additional expense they have to incur to raise livestock. Since the wolves have become nuisance animals to so many farmers in the state, they have been placed in a situation where they spend extra money and time to provide and care for additional animals. Time is also money. She asked the Board to follow the legislative intent of the 350 goal as was established with the WI Wolf Management Plan to help ensure farmers the ability to keep more of their profit. **(Handout)**

36. **Randy Jurewicz**, Madison, representing WI Chapter Wildlife Society. He is a retired wildlife biologist that worked for the DNR on the wolf management program for 31 years. Who thought that the 1999 Wolf Plan would be this misunderstood? The Wildlife Society is a national organization of professional wildlife biologists. Both the national and local Wisconsin chapter are totally in favor of a regulated harvest of animals, including wolves and more importantly, the needed control of wolves causing depredations.

They do not support this rule as presently written. The initial harvest of wild wolves in WI can best be described as experimental. The proposed harvest framework that Bill talked about this morning, has a number of uncertainties. The WI Chapter believes that harvesting at the maximum, 20%, within the two zones identified as the most suitable wolf habitat, is inappropriate given all of those uncertainties. Harvest zones 1 and 2 should have harvest quotas of only 10% or 35 wolves in zone one and 20 wolves in zone 2 for a new grand total of 156 wolves and not 201. 20% is too heavy. That kind of harvest at 10% is both a prudent and professional approach to this program. **(Handout)**

**Mr. Kazmierski** asked whether the 350 number that was decided on in 1999 was balanced between the biology and the social carrying capacity.

**Mr. Jurewicz** stated 350 was an estimate.

**Mr. Kazmierski** stated the social side has not really changed. It has gotten more vehement against more wolves due to increased depredation shown on the charts. He asked Mr. Jurewicz why he feels this number should be changed because scientifically you thought that number was sound in 1999.

**Mr. Jurewicz** stated there was a misperception that fewer wolves would equal fewer depredations.

Depredating wolves need to be removed immediately by wildlife services and landowners. They have already killed 39 wolves in WI. There are 100 people out there that have permits to kill wolves today. Those people are taking care of the problem wolves. WI did not have that in the past. Up until January 27, 2012 with wolves being on the federal list, WI did not have the ability to remove depredating wolves.

**Mr. Kazmierski** stated that is what the hunting season is supposed to do. Remove some wolves and minimize depredation. He has data from the Society's website that shows when removing depredating wolves, depredation dropped dramatically after the first season in Idaho. That was not their most recent season where they reduced the population by 50%. They state WI in there as showing the same results when we had our depredation tags a few years we had that opportunity. He did not know how you think more depredation.

**Mr. Jurewicz** stated because this will end up disrupting packs. Those individuals that get disrupted from the packs will be livestock killers rather than deer killers. People are going to take out the biggest and best deer killing wolves on those tags, leaving the pups and yearlings.

**Mr. Kazmierski** stated that according to Idaho, that does not seem to be true and there are no signs to support that at this point.

**Mr. Jurewicz** stated that we are not Idaho.

**Dr. Thomas** stated this means something to her if the Wildlife Society is coming out on something. She asked Mr. Jurewicz to clarify the process the Wildlife Society go through to come to this recommendation in reducing the quota in zones 1 and 2.

**Mr. Jurewicz** stated that the Wildlife Society has a nine item policy statement. Working within that nine items, the Wisconsin Chapter president Scott Hull, reviewed the draft statement and agreed that the harvest of 20% in the best habitat is too drastic this first year.

**Dr. Thomas** clarified that Mr. Jurewicz wrote the statement and that the Board reviewed it.

**Mr. Jurewicz** confirmed.

37. **Matt Dallman**, Minocqua, representing The Nature Conservancy (TNC) as Director of Conservation. This is a great success story for the DNR and their managing this apex species. For the first time hunt, TNC requests that the vast majority of wolves be harvested this year from secondary and tertiary ranges. The current structure proposes that potentially nearly 30% of the quota come from primary ranges. That is way high. By focusing on a harvest in secondary and tertiary habitats, it would reduce problems between wolves and humans and increase stability and the likelihood of maintaining a healthy wolf population in WI. They recommend a quota in primary ranges be set at 10% or lower to accomplish this goal. They would also like to see the DNR convene a group of experts in the coming year to scientifically reevaluate what a healthy and viable wolf population is to WI. Wisconsin's current management goal of 350 was set 13 years ago. We have learned a great deal since that time as far as carrying capacity and habitat requirements of this species. It is essential that the state targets to manage the species in an ecological and societal carrying capacity for WI. This information would be invaluable in setting harvest goals in the future. TNC would be happy to work with the DNR to convene and identify a group of experts to answer these important questions. The Conservancy advocates caution. Most agree the last thing we want is to return the wolf to the listed status. DNR is being overly aggressive in their proposal. Please consider lowering quotas this year, focusing hunting on secondary and tertiary areas, and convening a group of experts to reevaluate the wolf management plan.

**Mr. Bruins** stated Mr. Dallman started off by talking about how great a job the DNR has done in the past 30 some years in reestablishing the wolf population to the levels it is at today. Yet he came out with others being highly critical of the DNR plan to manage the wolf population in the state. Why would the DNR, who has done such a fabulous job of building the wolf population back in the state now want to deep six it. What would be the rationale for that?

**Mr. Dallman** stated we really need to reevaluate the plan that was written 13 years ago. If it was left for DNR staff and the experts within Wisconsin to determine what the proper number is, that would have been great. The legislative process had taken that out of their hands. That is the issue.

**Mr. Hilgenberg** asked Mr. Dallman whether he had a number in mind for wolves.

**Mr. Dallman** stated no. That is why there is a need to convene a group of experts. They would be happy to bring in experts they work with across the country, people from WI to sit down and look at updating 13 years of data to figure out what that number really is. What is the societal carrying capacity; what can the land handle. He does a lot of work with forestry. They do see issues.

**Mr. Hilgenberg** stated the Board has to put a number on the page which is now 201 as supported and recommended by the DNR. What is your number?

**Mr. Dallman** stated they do not have a number to set. If they take the core to 10%, we are looking at 160's.

**Chair Clausen** asked whether TNC would have an issue if we kept an overall goal of 201 but took the other wolves out of the other part of the state.

**Mr. Dallman** stated their goal issue is to maintain a core area and a core population and deal with problem animals. If you want to shift it, shift it to the place where problems are occurring and not in the core areas.

38. **Emily Matthews**, Kiel, representing self. She stated there is a reason there needs to be a bounty on wolves. They are dangerous animals. They threaten livestock. All the models underestimate population numbers. Out west, the problem is so bad that they ran out of money to reimburse. Ranchers first had to prove it was a wolf kill which was hard to do and were reimbursed at only 1/8 their actual loss. She would like to debunk the myth that wolves kill only sickly animals. Often they kill for the thrill. The losses incurred by ranchers indicate this. She questioned the boundaries. She lives in the lower, southern zone. Will these permits be assigned according to area where you do not want the wolves or are people just going to go where the wolves are? In general, she was in favor of the hunt but with a few exceptions. The objective should state "to reduce" and not to begin to reduce. She asked why the DNR wants a population above the population goal? Why is the quota set so low? In 2005, the Idaho Statesman reported that WI's wolf population was already 700 back then. The deer herd has seen reduction. People have given up hunting because they do not want to waste money going after non-existent deer. She agrees that baiting should not be used. She does not think dogs should be used and she certainly does not think that they should be clubbed. They should be shot. There are some people just think we should not keep livestock at all and we should all be vegans. **(Handout)**

39. **Barb Eisenberg**, Milwaukee, representing self. She urged the Board to vote no on the proposed rules. She came from Milwaukee today because it was an important issue to her and for many that were unable to attend. She also noted that there was a problem with the comment email address given in the Milwaukee Journal Sentinel. Emails were rejected and did not go through. She did not know how many other citizens tried to submit comment and had their emails bounce back. They deserve the right to be heard. When citizens cannot be heard, we feel powerless.

She has a degree in Biological Aspects of Conversation and understands the importance of large predators in the ecosystem. She urged the Board to examine the science carefully and give the greatest weight to the research conducted here in WI and not Idaho because it is the most relevant data. She had listed facts to help her consider the rule. However, what it comes down to is not a question of whether we can manage wolves with hunting, trapping, hounding and baiting, but should we. She stated no, we should not. There is no biological reason for a wolf season. She has not seen any research showing that a wolf season has any effect on depredation, although the implied reason for the hunt is depredation, the DNR's stated reason is to reduce the statewide wolf population and provide hunting and trapping opportunities.

The 350 wolves mentioned in the management plan was a minimum number believed to be necessary to sustain the population without the threat of extinction and not a maximum. Estimates for wolf habitat in the plan are out of date. A 2007 GIS analysis concluded that the biological carrying capacity is higher than previous estimates. In addition, there are plenty of hunting and trapping opportunities in WI. Depredation is and always has been addressed through the removal of wolves found to be a threat to livestock and educating farmers and hunters in how to prevent depredation. Professor Treves, wolf management and public policy research, has developed a risk map that predicted 92% of future livestock depredations but it seems so far his research has not been used to shape wolf management policy. It is not a question of whether we can legally manage wolves but should we. She asked the Board to vote no and recommend the DNR set the number of permits at 100 or whatever number of permits have already been issued for depredating wolves. No more. **(Handout)**

**Ms. Wiley** asked Ms. Eisenberg whether she suggests the Board simply reject Act 169.

**Ms. Eisenberg** stated if it is within your power, yes.

**Ms. Wiley** stated it is not.

**Ms. Eisenberg** then stated for the Board to reject the rules.

**Ms. Wiley** stated they would be playing a very careful game if they did that.

**Ms. Eisenberg** asked whether it was possible for the Board to set the number at zero. It is a number.

**Ms. Wiley** stated it would be a dangerous thing to do.

40. **Shawna Hoess**, Fort Atkinson, representing self. She did not testify.



41. **George Meyer**, Madison, representing self. He stated we heard many today that want a more aggressive harvest bringing the population of wolves in the state of WI closer to the 350 wolves set in 1999 and some that want no wolves harvested. He spoke to the Board from the perspective of some of his former colleagues. Some that signed the 1999 Wolf Management Plan. There was a balance to the process and it took many years. Excellent scientists, Randy Jurewicz, and a great public involvement were engaged. He then read the most important sentence in the Wolf Management Plan from 1999: "The goal (350) seemed to be a reasonable compromise between population capacity, viability, and public acceptance." He stated there is no question, that there are 800+ wolves in WI. They knew in 1999 there was more capacity. This came down to a compromise. That is not a bad word. In 1999, 62% of the public that was surveyed believed the goal should have been 350 or less. They recently collected signatures across northern Wisconsin from Burnett County to Forest County. That number has not changed. The unfortunate illegal harvest taking place gives you some other data point on what the social acceptance is. As Laurie Groskopf stated earlier, 18 counties accepted it. We need to have a balance of ecological, viability, and social. **(Handout)**

**Chair Clausen** asked Mr. Meyer on his and WI Wildlife Federation's thoughts on giving the tribes a 6 mile buffer around the reservation.

**Mr. Meyer** stated WWF has no position. He heard testimony on the buffer from Chairman Wiggins and others. His response was they have no sovereign right to a 6 mile buffer. Their rights stop at the boundary line that the tribes have used. He believed the state has the ability to explore, not in the temporary rule, but in the permanent rule to look at that request. You would need to justify biologically those 6 miles protecting core population. Clearly, you need to allow depredation control. And before you do that as discussion for the permanent rule you should get the landowners in that 6 mile area to sit down and talk so you get acceptance. It may not fit every reservation. Some are scattered. It could be explored.

42. **Tim Van Deelen**, Waunakee, representing self. He is an associate professor of Wildlife Ecology at the University of Wisconsin. His research specialties are the population management of wolves, black bears, and deer in WI. He testified in favor of having a wolf hunt in WI in front of both the Senate and Assembly Natural Resources Committees. His statement today was informational. He highlighted findings and recommendations from the recently released Deer Trustee's Final report which have a direct bearing on the development of policies for managing wolves in Wisconsin. Their final report was released last week. In the context of deer management the Deer Trustees final Report found that "predators have not had a negative impact on statewide deer herd size or quality" (page 37) or on the demographics of deer living in the northern and central parts of WI where wolves are most numerous (page 37). They cite multiple lines of evidence for this finding including review of relevant scientific literature, lack of population level effects associated with increasing wolf numbers, and lack of effects observed in demographic parameters derived from the age structure of harvested deer.

Despite these findings, concern remains about the impact of predators on deer. The Final Report recommends continued research into the effects of predation on the deer population. Recommendations specific to management policy under discussion today includes a specific recommendation to revise WI's wolf management plan including additional human dimensions research to quantify desires for wolf management that are more representative of WI's citizens and a specific recommendation to implement a wolf management plan to limit/decrease wolf societal conflict.

On this last recommendation they include two very specific pieces of advice: 1) "The goal should be to limit/decrease wolf societal conflict rather than a goal to sustain some specific number of wolves (page 42); and 2) "We believe that the initial wolf population control program should be conservative"... "to reduce or prevent legal challenge" (page 42). He raised these issues because he thinks they reflect biological wisdom and because they suggest that the 2 imperatives of wolf management need to be population stability for the wolves and relief for livestock owners who are experiencing depredation. This was the substance of his testimony to the Senate and Assembly Natural Resources committees. Their modeling suggests that population stability depends on providing core areas. To him, 10% sounds better than the 20%. Similarly he testified that we should define success in wolf management in terms of our ability to address depredation problems rather than in terms of goal number that is difficult to justify. This is exactly what the Final Report recommends. Advocating for a goal of 350 reflects a misreading of the 1999 wolf plan and to the extent that it represents a judgment based on conservation science, that science is over a decade out of date. **(Handout)**

**Chair Clausen** stated to Mr. Van Deelan that he had talked about stability and that he had been involved in modeling. He asked Mr. Van Deelan to comment on the difficulty of maintaining stability in a given number population.

**Mr. Van Deelan** stated this would be elementary population harvest management. Anyone can read about this. It is outlined in the deer management manual the DNR has published. It is also in the 1984 DNR ecology deer management book, a manual most deer hunters have on their shelves. 350 was a stable number if the carrying capacity was 500. Stability has to do with the ability for the population to remain at a given size if you hold the quota constant. If you have a relatively high quota built into your carrying capacity, then mistakes you make are sort of self-correcting.

The key difference between the 1999 report and where we are today, is our understanding that the carrying capacity is dramatically higher. That is a very practical problem with DNR, that instability. It means that you have to correct yourself in each time step for each year. That then requires that you have very precise testaments of wolf numbers. If you are in the neighborhood of 350 – 400 individuals, this is a very shy and cryptic predator, which exists on the landscape in very sparse density. If you think the decision of deer estimates are hard to estimate, try estimating a sparse number. It is going to be difficult. It is going to be expensive. It will set up a similar argument on deer as to what the numbers will be. Thinking out of the box, the first goal to see if we can steer our wolf harvest towards areas of depredation are occurring and recognizing that harvesting the core of the wolf range, comes at an opportunity cost. You cannot apply the quota you are taking out of the core range in the middle of the national forest somewhere to areas where you going to have depredation concerns and that becomes more severe as you reduce the population size.

**Mr. Bruins** stated the concern is to maintain the core areas of the wolf. He questioned Mr. Van Deelan as to whether the wolf understand what this parameter is? If food disappears in that area, what happens to that core area?

**Mr. Van Deelen** stated that is a very hypothetical. You have probably three times as many deer on the landscape as what would be in the wolf population. Does the wolf understands this? The individual does not but the population does. Wolf packs are territorial. They tend to stay in a place rather than move. It is not as fluid as what you are asking.

**Mr. Bruins** stated it is somewhat fluid because they are going to find food where it is probably the easiest to find.

**Mr. Van Deelen** stated that would change on the order of tens of years and not year to year.

**Mr. Kazmierski** referenced Dr. Kroll in setting the wolf population at societal conflict level rather than a number. He agrees with that concept. Shooting at numbers is always a pain. We still have a societal conflict here. Would you recommend the Board set at a depredation level? You also stated that depredation does not include the ones we are paying for. It also includes wildlife depredation. How would you set a goal at where to keep the wolf population without a number?

**Mr. Van Deelen** stated his point is, it is much easier to track depredation than it is going to be tracking wolf numbers. If you are able to steer a harvest towards the agricultural areas and measure the decline in depredations, you are satisfying one of the primary goals of wolf management without having to come up with what is going to be a difficult population estimation problem. That is the point he is making and a point that Dr. Kroll and the committee members made.

**Mr. Kazmierski** stated Dr. Kroll went on to say that depredation study is important and establishing that in his report. Are you suggesting we have more of that depredation study going on especially in areas there is a high population?

**Mr. Van Deelen** stated he is talking mostly about depredations on livestock.

**Mr. Kazmierski** stated but the public is not. The public is talking about all depredation.

**Mr. Van Deelen** stated he understood that. To answer your question, how do you fund the depredation study? He can put more graduate students on it. He was happy that the Final Report was very enthusiastic about depredation studies, recommended expanding, and that sort of thing. However, research is expensive and the cost benefit analysis that the DNR has to do with a limited pot of research money. If DNR decides that more work, more detail, more study areas is important for research on predation on deer, he would be happy to work with them to do this. The context we were talking about has mostly to do with the depredations on livestock.

**Mr. Kazmierski** stated when we are trying to balance the social aspect, that is what he is looking at. The social includes the hunting community and the agricultural community, and the people with their pet poodles. He has to satisfy all of those in coming up with a recommendation.

**Chair Clausen** stated Dr. Kroll also said that it did not appear to be impacting deer populations in the northern Part of WI.

**Mr. Kazmierski** stated that if you read the whole report, that was just one line.

43. **Chris McGeshick**, GLIFWC Board of Commissioners Vice-Chair, and **James Zorn**, GLIFWC Executive Administrator, representing Voigt Intertribal Task Force of the Great Lakes Indian Fish and Wildlife Commission (GLIFWC) (MOVED FROM 18<sup>th</sup> PLACE) (**Handouts**)

**Chris McGeshick**, GLIFWC Board of Commissioners Vice-Chair spoke in opposition to this rule. The tribes take seriously the management responsibilities that flow from these rights, and have steadfastly maintained their intent to be full participants with the state in managing the resources of the ceded territory, including the wolf. Their testimony includes that this rule represents a backlash against wolves. A punishment for the protection that wolves received under the ESA. For tribes, who believe that their fate is intricately tied to the wolf, this is particularly disturbing. The DNR's use of a population goal from the 1999 Wolf Management Plan is inappropriate. The DNR's explicit effort to reduce wolf populations is contrary to the Voigt Task Force's Management objectives. The harvest rate proposed in the rule pushes the envelope of allowable harvest and leaves little room for error. Depredation harvest was mishandled in the quota setting process used for the rule. The distribution of depredation harvest is not taken into account by the proposed quotas. The lack of zone restrictions creates enforcement issues and could lead to quota exceedances in some zones. The DNR also rejected the tribes' request for a six mile buffer around reservations.

For these reasons, the Voigt Intertribal Task Force urges the Board to reject Emergency Board Order WM-09-12(E) or at least 1) direct DNR staff to engage the Voigt Intertribal Task Force to develop a co-management framework related to wolves. This would include establishing a state/tribal wolf management committee with state and tribal co-chairs, responsible for making management recommendations to both the state and the tribes using a consensus approach; 2) Direct DNR staff to work with the tribes to develop a joint Wolf Management Plan to reflect current conditions, including a more appropriate population goal; and 3) Reduce the wolf quotas for this year's harvest, particularly in the core wolf zones.

Mr. McGeshick shared a story with the Board that is important to himself and to their culture and tradition regarding a healing circle ceremony which is essentially for the hurting and healing in the tribal community. He had invited DNR staff to attend this as well. For the ceremony he was provided one of those pebbles that carry a message of the tribal community, which is what they represent at GLIFWC. In the healing circle run or walk, essentially you walk from Mole Lake all the way up to Lake Michigan. You have time to resonate and think about what you want to say and what needs to be healed. To the tribal communities this is really important spiritually.

We cannot just say that this is the way things happen. We have to work together. It is a co-management aspect of our natural resources. There are a number of things to address today. DNR staff told him that they are uncertain as to what can impact the wolf population such as goals set at 350. There are a number of biological impacts. We talked about the science, we talked about biology. They have uncertainties and if you are not plugging in the right numbers, it is going to have an adverse effect. We are positive of that. From that uncertainty, he sees the magic number of 201 right now. Why not evaluate this uncertainty more?

The uncertainty of even coming here and speaking since this is legislation, it is law. Now you are approving the emergency rule. This is a process we go through all the time. But what happened with the legislature taking an action essentially restricted what the Board does. They took an agency, the DNR, and are limiting them in how they can biologically manage their resources. You are not making decisions for the state. The legislature did. Now you have to try to rectify that through the rule making process. One area that he is impartial to is the safety aspect. He recognizes there are a number of things that he wants to discuss. There are many people hunting deer during the 9 day gun deer season and many are out in the woods. Now you are going to allow buckshot. When it comes to working together, the tribes have a strong engagement when it comes to mining and wolves. It is something they view as very spiritual.

**James Zorn**, GLIFWC Executive Administrator, representing Voigt Intertribal Task Force of the Great Lakes Indian Fish and Wildlife Commission (GLIFWC). There are key points, as Chris McGeshick mentioned, that the Voigt Intertribal Task Force wants to reaffirm. As you know, this is a very difficult thing for the folks in his tribes to see. If anyone by now does not truly understand where wolves fit in to the Anishinaabe life way and world view, then you have been sleeping. They do not need to belabor that. What has challenged them at GLIFWC is to figure out how to play a role in the decision that this Board must make in the recommendations

that the DNR staff must make. It is a very difficult thing to do. He went back to a couple basics. Today started off with someone saying the state has a management goal of 350 wolves. That may be a true statement. The state thinks it has a management goal. We know from the tribes ceded territory treaty rights, that goal may not be legally applicable to tribes if in some way violates their rights or somehow serves to limit what the tribes have reserved under the treaty. He heard someone say that 350 was set by a list of four or five factors. He did not hear about tribal input. They suggest as well as others have suggested that this really needs to be revisited and anything out of the starting block so to speak on the 350, they suggest and might need to think about because of the unanswered question with respect to the Voigt Case and treaty rights. He said that it seems like there is only one aspect of the tribal treaty rights that is being considered here. The context of the mysterious 128 number that all of a sudden became 201 and so on. The idea of the tribes are entitled to harvest some wolves, there had to be this too.

But the other aspect of the tribal rights involves use of wolves as part of a living dynamic, balanced landscape. As you had heard Joe Rose say, as will ma'iingan (wolf), so will us. So the tribes feel they have in the treaty is the presence of the wolf on the landscape not the elimination of them. Not the claiming that a certain number to kill, the claiming of a number to maintain. As you know, the tribes are very reluctant to put numbers down. DNR has its challenges. He can communicate from the tribal perspective that the number of wolves on the landscape right now should be the number we are starting from. The 350 was there for some purpose. Actually in 1999, which was in the last century. The tribes and the treaty really bargained for a balanced society here where they were brought in, a treaty of peace. No more war. You get the land. You get the timber. You get the mineral. But hey, we get to use what is out there in the way we have since the time of the morning. That right of use is not just for take but for the presence of wolves. And so the tribes also bargained for a balanced natural world when the wolf can play its role regarding sustainability to tribes in their community. The tribes are very concerned that going out to shoot here as being proposed, based upon the 350 goes too far because the state does not have authority.

One other point, he has been in this business for 25 years. He was around in 1985 with the first interim spear fishing agreement. Back then what the tribes faced, in his view, is what the state now is facing. Yet the state is now doing exactly the opposite of what the tribes were asked to do then and what the tribes actually did. When you have uncertainty, the magnitude for error is great. If you recall, right after the treaty rights were affirmed in 1983, the tribes came knocking on the state's door asking to exercise whether it is deer hunting, spear fishing, migratory bird or whatever. The state said, oh please, we do not know a whole bunch. We do not know what affect this will have. Let us go slow. Let us crawl before we walk. Let us see what we have that has taken years to figure things out. Right here now, it seems in light of the uncertainty amid questions of sciences and all that stuff, you really do not know. The tribes were asked in fact in courts to regulate against the worst case scenario when it comes to the walleye fishery.

The tribes ask the state right now to do the same thing with ma'iingan (wolf). How we manage against the worst case scenario, that perfect storm, when something hits perhaps too much depredation focused right there in relation to some other hunting or trapping. How can we control that? Especially in areas that are near and dear to the tribes. Numbers? Do not ask the tribes to ask how many brothers they sanction to be killed. Going down to 350 is too many. At least this Board is exercising its responsibilities here in response of it, sounds redundant under the Voigt case, consistent with the stewardship, and the mandate that you have here under WI law and the WI Constitution. Thank you for the comfort of speaking honestly, frankly, and without fear that what the tribes have asked them to say would be misunderstood or misplaced.

**Chair Clausen** thanked everyone for their patience, passion, and their participation.

**Mr. Cole** MOVED approval, seconded by Ms. Wiley.

**Mr. Cole** asked DNR staff on the issue of depredation and focusing on areas of depredation, what latitude does the Board have to change those quotas in those areas? Seemingly, permits for depredation are enough according to some of the folks who had spoken today.

**Mr. Vander Zouwen** responded that if you are only concerned about depredation obviously we have ways to deal with that condition to the harvest. We are targeting permits for landowners that are having problems.

**Mr. Cole** stated that seemingly it is not enough that there should be a hunt in those areas.

**Mr. Vander Zouwen** stated that is a belief of a lot of people that we need to be more responsive than just dealing on those lands and to try to actually reduce the population. So we did recommend quotas that would reduce the population more in these areas that we think have the potential for more conflict because they are more agricultural.

Mr. Cole asked whether the depredation zone is zone 5?

Mr. Vander Zouwen stated zone 3 and zone 4 are areas that have more areas of agriculture. Obviously zone 6, which is the remainder of the state, is primarily agricultural and has a lot more people. They are requiring a lot higher quota as a percentage of the population. Trying to bolster the local depredation permits to landowners and through population reduction where we have more agriculture. That is the whole idea behind the zones and trying to protect more of the wolves in the northern part of the state that people have been calling for more protection.

Mr. Cole asked that in the areas of high amounts of depredation, whether the DNR continues to get complaints about depredation.

Mr. Vander Zouwen stated they are just getting this authority now and are just getting the permits out there. They have taken 39 to wildlife services and landowners so far. Not a very high number but has certainly helped the people that have taken them. He was not sure he understood the question.

Mr. Cole would like to focus a higher number in those areas. Zone 4 has 10.

Mr. Vander Zouwen said they did initially and what they took to the public recommend the far northwest where we have the biggest problems along Lake Superior in Bayfield Peninsula. They took out a map that had something called zone 1a in a very small, not so easy to put on recognizable boundaries, hard to know if you are in or out, but where the problems were. They heard feedback that it is going to be hard for people to know where they are, are they really going to apply for that zone because it is a small area to hunt on, and that it is primarily agriculture land. Are you really going to accomplish what your objectives are? And might people actually be hunting in the nearby county and federal land and registering it as having been taken there because the permit levels are much higher nearby this core area by federal and county lands? With all that input, they decided to simplify it and deal locally with the depredation permits and deal in more of a broad scale with these larger zones that we are proposing.

Mr. Cole asked whether he is missing something relative to where an overlay map is that shows where those permits have been taken out and the complaints overlaid on top of it is.

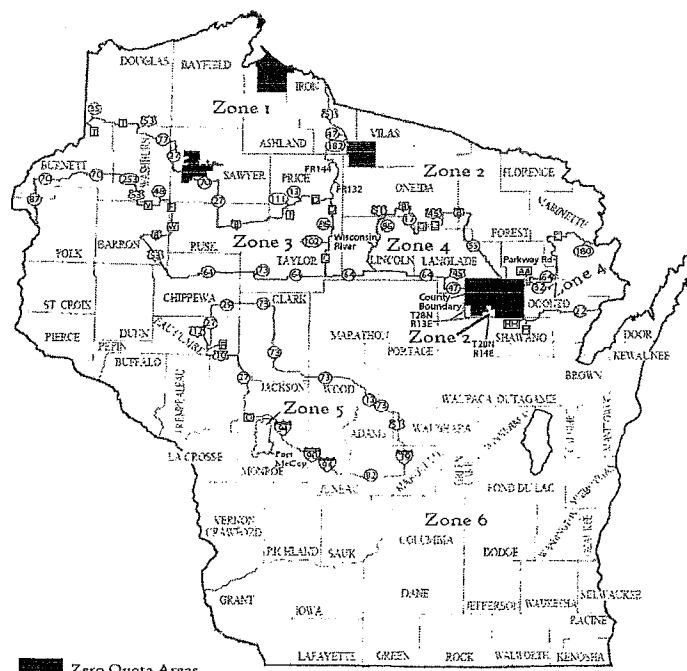
Mr. Vander Zouwen stated the DNR does not have a map to present to the Board. The best he can do is say which zones.

Mr. Cole stated and/or the number of permits.

Mr. Vander Zouwen stated primarily because they have had so much damage at the Fenengle (?) farm which is in zone 3 he believed, they removed around 15 wolves. A large percentage or a little less than half were taken right there. A fair number in the far North West part of the state were removed which would be zone 1 and a scattering elsewhere. This would be a simple representation.

**Mr. Hilgenberg MOVED, seconded by Dr. Thomas, to amend Board Order WM-09-12(E) to add the Stockbridge-Munsee lands to the non-quota areas where wolf harvest is not allowed.**

1. In SECTION 27 amending NR 10.145(30(f), at the end of the second sentence, add "Stockbridge-Munsee wolf zone".
2. In SECTION 29 creating NR 10.295, replace the map with this map:



**Zero Quota Areas**  
 Wolf harvest is not allowed within the exterior boundaries of the Bad River, Lac du Flambeau, Menominee, and Red Cliff reservations nor within the designated Stockbridge-Munsee wolf zone except with DNR depredation permits.

Mr. Hilgenberg stated that staff has reviewed this amendment.

The motion passed 7 - 0 on a roll call vote.

<b>William Bruins – yes</b>	<b>Preston Cole – yes</b>
<b>Christine Thomas – yes</b>	<b>Jane Wiley – yes</b>
<b>Terry Hilgenberg – yes</b>	<b>David Clausen – yes</b>
<b>Greg Kazmierski – yes</b>	

Ms. Wiley MOVED, seconded by Dr. Clausen to amend Board Order WM-09-12(E) to require the department to consider establishing additional areas where wolf harvest by hunting and trapping are not allowed if a tribe makes that request.

1. In SECTION 27 amending NR 10.145(3)(f), create a third sentence which reads, “The department shall consider requests from any tribe for inclusion in additional zero quota, no-harvest zones by rule.”
2. In SECTION 29 creating NR 10.295, add a sentence following the introductory material which reads, “The department shall consider requests from any tribe for inclusion in additional zero quota, no-harvest zones by rule.”

Mr. Bruins stated he was uncomfortable with the amendment. He asked whether any of this proposal affected zone 6, in the unsuitable range.

Ms. Wiley stated no because there are no tribes there.

Mr. Bruins asked whether any of this proposal could possibly impact predation issues for livestock farmers.

Ms. Wiley stated no because already within the reservations as she understands it, you can in fact if you have a non-tribal piece of land within a reservation and there is depredation, you can apply for a depredation permit. She asked the DNR attorney if that is correct.

Tim Andryk, DNR attorney, stated yes you can in no harvest zones.

Chair Clausen asked Mr. Andryk to read the amendment for all to hear.

Mr. Andryk read the amendment. The option to consider depredation permits are still included in the no harvest zones that are included. In those no harvest zones in the rule, depredation permits are still lawful. You can use them. No harvest zones apply to hunting and trapping but not depredation permits.

Mr. Bruins stated that this is a more relative topic for the permanent rule. He really does not see a need to include this in the emergency ruling that we are dealing with that is on the table now.

Mr. Hilgenberg asked for clarification on the motion as to whether this is strictly ceded territories and reservations here or any place they want.

Ms. Wiley stated just like the Stockbridge. They are not part of the ceded territory.

Mr. Hilgenberg questioned whether it is contiguous to their area.

Ms. Wiley stated not really. Menominee’s are not part of the ceded territory.

Mr. Andryk stated the way the amendment was written applied to outside and inside the ceded territory. It applied to all tribes and not just the Chippewa.

Mr. Cole stated “shall consider.”

Ms. Wiley stated the Stockbridge-Munsee reservation is not part of the ceded territory.

Mr. Andryk stated he believed it is outside.

Mr. Kazmierski questioned whether the amendment only applies to the emergency rule.

Mr. Andryk stated that is correct.

Mr. Kazmierski stated which we are going to be voting on and will not have time in between for tribal consultation. It might set some precedent for the permanent rule.

Mr. Andryk stated that is up to the Board. He did not think it ties your hands with the permanent rule.

Secretary Stepp asked Kurt Thiede, Land Administrator to address the consultation so the Board is aware of their efforts.

Mr. Thiede stated as he recalled, there was a formal consultation including Secretary Stepp, Executive Assistant Scott Gunderson. There was also a trip up to LCO for another consultation opportunity with the Voigt Task Force. In addition, the Voigt Task Force had requested the DNR also reach out to the other tribes including the Chippewa tribes. They held individual meetings with leadership from Menominee, Stockbridge, and he believed John Gozdziński, Northern Regional Director, had an opportunity to meet with certain members of the Chippewa tribes. They also had the annual fall tribes meeting that took place up in Red Cliff. They also had opportunities to address the wolf issue with representatives from individual tribes as well.

Chair Clausen asked whether this amendment applies only to actual reservation or treaty trust lands.

Mr. Andryk stated the way it is written it can apply to any closed area that the tribes have proposed and that we shall consider their proposal.

Chair Clausen clarified whether or not they own the property.

Mr. Andryk stated yes.

Ms. Wiley questioned whether the DNR met with the Forest County Potawatomi.

Chair Clausen stated they are having an extended discussion and the roll call was already started.

**The motion failed 3 - 4 on a roll call vote.**

**William Bruins – no                      Preston Cole – yes**

**Christine Thomas – yes                Jane Wiley – yes**

**Terry Hilgenberg – no                 David Clausen – no**

**Greg Kazmierski – no**

Chair Clausen stated this is a temporary rule and he was not exactly sure of the ramifications.

Chair Clausen stated there has been some discussion about changing quotas around and lowering goals and quotas. Is there any interest on the Board in pursuing that?

Mr. Bruins stated the DNR has done a yeomen's job with striking the right balance of quotas on this first hunt. Obviously, we are going to learn things but he things as has been presented, it is a very good start to something that could be a very valuable tool to resource management in this state.

Mr. Kazmierski complimented the DNR on trying to find what to be an impossible balance. To the audience here on both sides of issue, it is important for people to understand that we should be here with big smiles on faces that this has been a huge success. A big part of that success has been those evil, barbaric sportsmen. He distributed data he requested from Kurt Thiede on exactly how the wolf program was funded since the beginning of the program. It shows that federal Pitman-Robertson expenses at \$1.952 million dollars, 67% of the total wolf recovery management program in the state. These are sportsmen willing to step up and once again serve as the North American model. This is another success story. We should defer to our science team at DNR and include the rule as written.

Dr. Thomas stated there have been several aspects of this that have been controversial over the last few weeks in emails and discussions and what have you. Because this is really, several people have called it an experiment, and it clearly is the first time we are doing this, she would like to insure that the most possible data gets collected.

**Dr. Thomas MOVED, seconded by Mr. Hilgenberg to amend Board Order WM-09-12(E) to include language that the department shall come back to the Board on September 26, 2012 with a plan for data gathering and that the data must answer many of the unknown questions prior to the permanent rule. Data also must be gathered annually from the wolf harvesting season. This information must be utilized in establishing recommendations for subsequent seasons. Information gathered shall include, but is not limited to, whether or not there has been physical contact between dogs and wolves, and information necessary to use the criteria in subs. (1m) and (1u) to establish harvest quotas and the number of licenses to issue.**

Mr. Cole requested that the department come back to the Board at the September 26, 2012 meeting with a timeline for updating the Wolf Management Plan and that the new wolf plan must be proposed in tandem with the permanent rule.

Secretary Stepp stated that this has been an amount of heavy lifting done so far, first of all, to address Dr. Thomas' concerns about data gathering. She would love to hear input from all of you from constituents around the state that you heard from, from your regions and the areas they are most concerned about as well. She also extends the offer to the public who has been very good about reaching out to her during this process to find out what the areas are of most concern. The DNR will do what it takes in order to instill faith in the public in the state of WI that we can have a responsibly managed wolf herd. She knows the DNR can do that well because we do a lot of things well in the DNR. She is very committed to making sure that we can do that. Having said that, when they talk about the Wolf

Management Plan being opened up and redone, she wants to have Kurt Thiede address some of the nuances to that. **Mr. Thiede** stated his first thought was they had been asked to come back in September with a timeline and recommendation for the review of the Wolf Management Plan. So far, all of their efforts have been on this rule at this moment. They understand there is more work to do, obviously dependent on the Boards' action today with the hunt underway and the application process on a very short order. If it would please the Board, DNR can commit at least at this point to be ready in September with our recommendation but he thought at this point cannot give a firm yes that they will be ready by a certain date.

**Mr. Hilgenberg** questioned in speaking to the amendment, when the board will be looking at the permanent rule. **Chair Clausen** asked Mr. Andryk for the timeline on this.

**Mr. Andryk** stated Act 169 requires the DNR to have a permanent rule ready to review by Legislative Council Rules Clearinghouse within eight months of the act going into effect which means at the December 12, 2012 Board Meeting. The Board has to approve that rule proposal for the DNR to send over to Legislative Council which is generally the request to go to hearing. Then after that, there is no timeline. Then we can go to hearing, have consultation with the tribes, make changes to the proposal, and focus on the economic impact of that proposal. The Board can adopt a rule anytime thereafter. Basically, the emergency rule you are acting on today would be in effect until the permanent rule comes into effect. The only timeline that is required in Act 169 is to get that rule proposal to the December Board meeting for the Boards' approval and to send the proposal to Legislative Council Clearinghouse and to the public to solicit additional comments.

**Chair Clausen** asked whether this will not be finished before the data comes in from the first year harvest.

**Mr. Andryk** stated the initial proposal that you will see in December, yes. They will not have all the data in because the season will still be ongoing. By the time the Board acts on adopting it, all of the season data will be in and the Board will be able to consider all the information the DNR has gathered before adopting the permanent rule.

**Mr. Hilgenberg** thought that the Board would want the DNR to have the updated plan for the permanent rule. The scenario being, in order for the DNR to have all the stuff ready for the next season, that has to be done by May or June or some date like that. If we do not have a permanent rule in effect next year at this time, then we operate under the emergency rule.

**Mr. Andryk** stated yes, with the exception of the quotas. Quotas are a separate item. The DNR's proposal is to have the quotas brought before the Board on an annual basis.

**Chair Clausen** asked Mr. Andryk whether two separate motions are needed to approve the quota and the rule or all at once.

**Mr. Andryk** stated the Board can do this all at once if you wish.

**Chair Clausen** clarified that the quota applies only to this season.

**Mr. Andryk** stated that was correct.

**Mr. Kazmierski** questioned Mr. Andryk in that he was required to sit on the sidelines for some of the lawsuit.

**Chair Clausen** stated that we have a motion and a second on the floor here.

**Mr. Kazmierski** stated this is for part of the discussion and that this is about opening the plan and coordinating the rule. He asked whether it wise for the Board to open the plan from a federal perspective.

**Mr. Andryk** stated it depends upon how we do it, how comprehensive they do it, and whether it is science based. It is one of those things that he believes they will have to be careful with. You heard testimony today that the delisting was based on our plan and what was in there. Moving forward to update that plan, DNR has to be careful and try to minimize the risk to the season in the future that occur that is going to have to be a cautious approach.

**Mr. Kazmierski** questioned whether this would need to be tracked on the same timeline.

**Mr. Andryk** stated not necessarily in his opinion.

**Dr. Thomas** reiterated her motion that maximum data gathering happen before we attack the permanent rule.

**Mr. Cole** stated at the end of December to go out to the public and that process usually takes 4 – 6 months or maybe one year.

**Mr. Andryk** stated it can vary within those timelines.

**Ms. Wiley** stated in the meantime the emergency rule would be in effect except for the quotas.

**Mr. Andryk** agreed.



The motion passed 7 - 0 on a roll call vote.

William Bruins – yes	Preston Cole – yes
Christine Thomas – yes	Jane Wiley – yes
Terry Hilgenberg – yes	David Clausen – yes
Greg Kazmierski – yes	

Dr. Clausen asked the Board whether there was any interest to take up the 6 mile buffer around reservations.

Mr. Cole offered that the management plan should take a look at that.

Dr. Clausen asked about inclusion in the permanent rule.

Mr. Cole stated as Kurt Thiede said, there is a lot of work to be done. He worries about private property issues with a 6 mile buffer that seems like a lot without hearing the impacts of those property owners. He thought they should ascertain their sentiment around a 6 mile buffer and wait to hear back from them. If they like it, he loves it.

Dr. Thomas then spoke on one of the controversies swirling around with potential for animals being clubbed to death. She is assuming the potential for that to happen would be for an animal that was not dead in the trap.

Dr. Thomas MOVED, seconded by Mr. Hilgenberg to amend Board Order WM-09-12(E) to require any wolf found not dead in the trap be humanely dispatched by shooting.

[This is in a trapping-only section, preceded by the introductory material, “No person may . . .”]

Section 25. NR 10.13(1)(b)18. is created to read:

NR 10.13(1)(b)18. ‘Killing captured wolves.’ Kill any wolf except by the use of a firearm. A person who is prohibited from possessing a firearm under state or federal law, who has caught a wolf by trapping, may authorize a person who is accompanying them and who is allowed to possess and use a firearm to kill the trapped wolf with a firearm.

The motion passed unanimously.

Dr. Clausen commented on reopening the wolf plan. As was said today, the wolf plan was the reason Wisconsin got the delisting. If there is reluctance to reopen the wolf plan, which the Board has mandated should happen every five years, look at what was actually in the wolf plan that we received the delisting from. We have departed a long way from the plan in that it calls for no public harvest for a considerable period of time and it called for no compensation for dogs used for hunting. There were several things in there that were absolutely ignored. Fish and Wildlife did not say that this a deal breaker and we are going to relist you. I do not think we should have any fear about reopening this plan, especially when we are trying to bring more knowledge in.

Mr. Cole reminded the Board that there was an update to that plan in 2006-2007.

Ms. Wiley stated she had shared this earlier with Secretary Stepp, which was for her to use her considerable powers of persuasion as well as the strength of her position to convince the Legislators not use their collective heavy hand to enact laws rather than to go through the usual administrative rule process.

We have seen with Act 169 what happens when the professional DNR staff and the Natural Resources Board are excluded from the process.

And if the Legislature ignores you, Secretary Stepp, I hope you can appeal to the Governor not to sign environmental laws forwarded to him. We need public hearings beyond the Natural Resources Committees of the Assembly and Senate. We need our professional staff’s input, we need the Congress, we need environmental and conservation organizations and interested citizens input. And we need the Natural Resources Board to review the process and set the policy. We need total transparency for Wisconsin citizens to trust and value what DNR does and that will not happen if we are continually forced down this awkward and unreasonable path (ovation).

Mr. Hilgenberg thanked staff for all the work done. This has been a very hostile issue on both sides. It is very unfortunate but he personally believes they were very professional, very straightforward, and tried to be very accommodating in how they dealt with this issue. He commended staff for a job well done.

**Secretary Stepp** thanked the Board. She understands the extraordinary amount of reading that you have all done, public contact, and comment that you have reviewed. She continues to be impressed by this Board with how committed you are to the resource management of Wisconsin and how helpful you have been to her in making sure we are garnering our workforces in a direction and ways of making sure it upholds how you see the department should be going. The work that the men and women of WI DNR do under incredible scrutiny and there is always someone that is unhappy with it. She gave her personal and professional thanks to staff for their committed, spirited passion for Wisconsin. She then personally thanked the members of the public. There is nothing more inspiring for those of us in government to be able to interact with people who passionately care about any issue, no matter what side of the issue you are on. We look forward to your partnership as we look forward to managing the wolf population and all things we do at the DNR.

**Mr. Cole** called the question.

The original motion as amended passed 7 - 0 on a roll call vote.

<b>William Bruins</b> – yes	<b>Preston Cole</b> – yes
<b>Christine Thomas</b> – yes	<b>Jane Wiley</b> – yes
<b>Terry Hilgenberg</b> – yes	<b>David Clausen</b> – yes
<b>Greg Kazmierski</b> – yes	

**Mr. Cole MOVED**, seconded by **Mr. Bruins** to adjourn the meeting. The motion carried unanimously.

\*\*\*The meeting adjourned at 3:05 p.m.\*\*\*

The Natural Resources Board and Department of Natural Resources are committed to serving people with disabilities. If you need Board information in an alternative format, please contact:

Natural Resources Board Liaison: Laurie Ross at 608-267-7420 or [laurie.ross@wisconsin.gov](mailto:laurie.ross@wisconsin.gov)

**NOTE:** Each Natural Resources Board meeting is recorded. Tapes of each meeting are available for purchase by contacting the Natural Resources Board Liaison at 608-267-7420. The following resources are also available: Agenda Item Packets (green sheets), supporting documents, and public comment.



AFFIDAVIT OF LAURIE ROSS

State of Wisconsin ) Wisconsin Federated Humane Societies Inc., et al. v. Cathy Stepp, et al.  
) ss. Case No. 12-CV-3188  
Dane County ) SUPPLEMENTAL DEPARTMENT RECORD

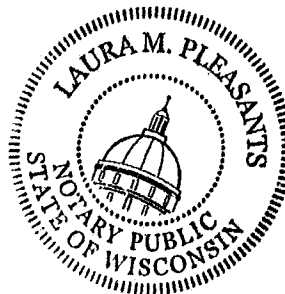
The undersigned, LAURIE ROSS, being first duly sworn on oath deposes and states as follows:

- 1. That she is a resident of the State of Wisconsin employed by the Wisconsin Department of Natural Resources as the Liaison to the Natural Resources Board.
2. That she personally prepared and attests to the accuracy of the following copies of official Department Records, which were approved by the Natural Resources Board on October 24, 2012, as being the accurate, official minutes/transcript of the September 26, 2012 Meeting of the Natural Resources Board.
A. Official Minutes/Transcript of the September 26, 2012 Natural Resources Board Meeting, agenda item 3.C.1. "Request approval of the statement of scope for Board Order WM-01-13, the 2013 Wildlife Management Spring Hearing rule proposals, including restrictions on training dogs in tracking and trailing wolves, and also for emergency dog training rules under Act 169".
B. Official Minutes/Transcript of the September 26, 2012 Natural Resources Board Meeting, agenda item 8.B.1., "Wisconsin wolf management plan timeline for revisions and discussion".
C. Official Minutes/Transcript of the September 26, 2012 Natural Resources Board Meeting, agenda item, 8.B.2. "Wolf harvest season information gathering."
3. That she personally prepared and attests to the accuracy of the following copy of the final agenda for the September 26, 2012 Meeting of the Natural Resources Board.

Laurie Ross (handwritten signature)
Laurie Ross

Subscribed and sworn to before me
This 25 day of October 2012.

(handwritten signature)
Notary Public, State of Wisconsin
My commission expires 10-20-13



**SINCE THE AGENDA WAS POSTED, THE FOLLOWING HAS CHANGED:**

NOTICE                    **REVISED (and on page 4) 9/19/12**  
NOTICE                    **ADDED (Real Estate Closed Session) 9/19/12**  
NOTICE                    **ADDED (Litigation Closed Session) 9/24/12**

View Natural Resources Board Member information, meeting agendas, meeting minutes and related materials online at:  
<http://dnr.wi.gov/about/nrb/index.html>

**NATURAL RESOURCES BOARD**

**A M E N D E D   A G E N D A   (rev. 9/24/12)**

For meeting at:  
Ramada Inn and Convention Center, Grand Hall  
205 South Barstow Street  
Eau Claire, Wisconsin 54701  
715-834-6121

Tuesday, September 25, 2012  
Wednesday, September 26, 2012

**NOTICE IS HEREBY GIVEN** that on Tuesday, September 25, 2012, the Natural Resources Board will tour and/or receive presentations at the following locations: at approximately 10:50 a.m., the Board will begin a tour of the Girl Scout Property, Chippewa Moraine, 26950 145<sup>th</sup> Street, New Auburn, WI, *topics:* property history, property data, and possible development/users. At approximately 1:15 p.m., the Board will arrive at EOG mine, near 135<sup>th</sup> Avenue, Chippewa Falls, *topics:* discussion of mining operations and transportation as well as discussion on the environmental and local issues associated with mining activities. At approximately 2:15 p.m., the Board will arrive at EOG mine, County Highway S, Chippewa Falls, *topics:* discussion on how frac sand is processed and shipped by rail as well as environmental and local issues associated with the processing.

**NOTICE IS FURTHER GIVEN** that on Tuesday, September 25, 2012, the Natural Resources Board will have a listening session in the Grand Hall at the Ramada Inn and Convention Center, 205 South Barstow Street, Eau Claire, Wisconsin from 4:30 p.m. – 6:30 p.m. **NOTE:** The public must preregister to speak by 4:00 p.m. on Friday, September 21, 2012 noon on Monday, September 24, 2012. If the Board receives no pre-registrations, the listening session will be cancelled. Registration information is on page 4 of agenda. **REVISED**

**NOTICE IS FURTHER GIVEN** that the Natural Resources Board meeting will convene at 8:30 a.m. on Wednesday, September 26, 2012, in the Grand Hall at the Ramada Inn and Convention Center, 205 South Barstow Street, Eau Claire, Wisconsin. The Board will act on items 1-7 as listed on the Agenda.

**NOTICE IS FURTHER GIVEN** that on Wednesday, September 26, 2012 at 12:00 p.m., the Natural Resources Board will meet in closed session under the authority of s.19.85(1)(e) Wisconsin Statutes for purposes of discussing potential real estate transactions *and under the authority of s.19.85(1)(g) Wisconsin Statutes for purposes of discussing litigation matters.* **ADDED**

**NOTICE IS FURTHER GIVEN** that matters concerning natural resource issues or the Department's program responsibilities or operations specified in the Wisconsin Statutes, which arise after publication of this agenda may be added to the agenda and publicly noticed no less than two hours before the scheduled board meeting, if the Board Chair determines that the matter is urgent.

**Wednesday, September 26, 2012**

**ORDER OF BUSINESS**

**1. Organizational Matters**

- A. Calling the roll
  - B. Approval of agenda for September 26, 2012
  - C. Approval of minutes from June 27, 2012 (moved from August 8 meeting)
  - D. Approval of minutes from July 17, 2012
  - E. Approval of minutes from August 8, 2012
2. Ratification of Acts of the Department Secretary
- A. Real Estate Transactions
3. Action Items
- A. Air, Waste, Water, and Enforcement
    - None
  - B. Land Management, Recreation, Fisheries, and Wildlife
    1. Request approval of the Lower Wolf River Bottomlands Natural Resources Area Master Plan (Tom Hauge, Wildlife Management Bureau Director and Yoyi Steele, Planner, 10 minutes)
    2. Request approval of the Governor Knowles State Forest Master Plan (Teague Prichard, Division of Forestry, State Forest Specialist, and Mike Wallis, Division of Forestry, Forester and Acting Superintendent Gov. Knowles State Forest, 20 minutes)
    3. Request approval to rename the Collins Marsh Nature Study Center to commemorate former department employee Leslie "Les" Neustadter (Tom Hauge, Wildlife Management Bureau Director, 5 minutes)
    4. Request Approval of the Re-designation of the Sandhill Station Campground from State Wildlife Area to State Park Property and Boundary Expansion for the Glacial Drumlin State Trail (Richard Steffes, Real Estate Director, 10 minutes)
    5. Land Acquisition - Northern Highland/American Legion State Forest - Oneida County (Richard Steffes, Real Estate Director, 5 minutes)
    6. Land Acquisition - Kettle Moraine State Forest - Southern Unit - Walworth County (Richard Steffes, Real Estate Director, 5 minutes)
    7. Land Acquisition - Avon Bottoms Wildlife Area - Rock County (Richard Steffes, Real Estate Director, 5 minutes)
    8. Land Acquisition - Governor Knowles State Forest - Polk County (Richard Steffes, Real Estate Director, 5 minutes)
    9. Land Acquisition - Buena Vista Wildlife Area - Portage County (Richard Steffes, Real Estate Director, 5 minutes)
    10. Land Acquisition - White River Fishery Area - Bayfield County (Richard Steffes, Real Estate Director, 5 minutes)
    11. Land Donation - Statewide Natural Areas - Door County (Richard Steffes, Real Estate Director, 5 minutes)
    12. Land Donation - Chippewa River State Trail - Eau Claire County (Richard Steffes, Real Estate Director, 5 minutes)

C. Scope Statements

1. Request approval of the statement of scope for Board Order WM-01-13, the 2013 Wildlife Management Spring Hearing rule proposals, including restrictions on training dogs in tracking and trailing wolves and also for emergency dog training rules under ACT 169 (Tim Andryk, Legal Services Bureau Director and Scott Loomans, Wildlife Regulations Specialist, 15 minutes)
2. Request approval of the statement of scope for Board Order WT-17-12, proposed rules affecting the creation of NR 119 related to the development of site-specific numeric phosphorus water quality criteria for lakes, reservoirs, and streams (Ken Johnson, Water Administrator, 5 minutes)
3. Request approval of the statement of scope for Board Order FH-18-12, recreational fishing regulations on inland, outlying, and boundary waters (Kate Strom Hiorns, Fisheries Policy Specialist, 5 minutes)
4. Request approval of the statement of scope for Board Order FH-19-12, housekeeping corrections, clarifications, and updates to outdated code regarding fishing in inland, outlying, and boundary waters (Kate Strom Hiorns, Fisheries Policy Specialist, 5 minutes)

D. Budget

1. Request approval of the Department's 2013 – 2015 Biennial Budget, including Operating, Capital, and Environmental Improvement Fund Components (Joe Polasek, Management & Budget Bureau Director and Steve Miller, Facilities and Lands Bureau Director, 40 minutes)

4. Citizen Participation – 1:00 p.m.

A. Citizen Recognition

1. Comeback Champs – Karner Blue Butterfly Program

B. Citizen Participation

(Citizen participation means speaking on items that are *not* on this month's Board agenda; appearances on items that are on this month's agenda are made at the time the Board considers the item. See complete information about Public Participation at Board meetings)

5. Board Members' Matters

- A. Approval of 2013 Meeting Calendar (Moved from August 8, 2012 agenda)

6. Special Committees' Reports

None

7. Department Secretary's Matters

A. Retirement Resolutions

1. Daniel B. Cardinal III
2. Deb Johnson
3. Mark Kubler
4. Billie J. Vanklooster
5. Thomas W. Wrasse

B. Donations

1. The Barbara M. Black Irrevocable Charitable Remainder Unitrust will donate \$26,000 to the Bureau of Endangered Resources for continued support of endangered species priorities

8. Information Items

A. Air, Waste, Water, and Enforcement

1. Update on Wisconsin waterway inventory (Meg Galloway, Dam and Floodplain Section Chief, 20 minutes)

B. Land Management, Recreation, Fisheries, and Wildlife

1. Wisconsin wolf management plan timeline for revisions and discussion (Kurt Thiede, Land Administrator, 20 minutes)
2. Wolf harvest season information gathering (Kurt Thiede, Land Administrator, 10 minutes)

The public is welcome to attend a Natural Resources Board (NRB) meeting unless it is noticed as a closed/executive session. The NRB also provides opportunities for citizens to appear and to submit written comment about issues that come before the NRB. Public (Citizen) Participation and NRB Information can be located at: <http://dnr.wi.gov/org/nrboard/>

Please contact Laurie Ross, NRB Liaison, at 608-267-7420 or by email at [laurie.ross@wisconsin.gov](mailto:laurie.ross@wisconsin.gov) with NRB related questions, to request information, to submit written comments, or to register to testify at a meeting or listening session.

Public Participation Registration and Written Comment Deadline:  
~~4:00 p.m. on the Friday before the meeting.~~  
Noon on Monday, September 24, 2012 REVISIED

The NRB and Department of Natural Resources are committed to serving people with disabilities. Please contact the NRB Liaison to request NRB information in an alternative format.



SEPTEMBER 25-26, 2012

View the September 2012 Agenda, information briefs (green sheets) on each item, and other meeting materials at: <http://dnr.wi.gov/about/nrb/agenda.html>

## NATURAL RESOURCES BOARD

### OFFICIAL MINUTES/TRANSCRIPT

3.C.1, 8.B.1, and 8.B.2

The regular meeting of the Natural Resources Board was held on Wednesday, September 26, 2012 at Ramada Inn and Convention Center, Grand Hall, 205 South Barstow Street, Eau Claire Wisconsin. The meeting was called to order at 8:30 a.m. for action on items 1-7. The meeting adjourned at 3:00 p.m.

#### ORDER OF BUSINESS

I. Organizational Matters

1.A. Calling the roll

William Bruins – present	Preston Cole – present
Christine Thomas – present	Jane Wiley – present
Terry Hilgenberg – present	David Clausen – present
Greg Kazmierski – present	

1.B. Approval of agenda for September 25-26, 2012

Deputy Secretary Moroney requested that item 3.B.7 – *Land Acquisition – Avon Bottoms Wildlife Area – Rock County* and item 8.A.1 – *Update on Wisconsin waterway inventory* be moved to the October 24, 2012 meeting.

Mr. Cole **MOVED** approval, seconded by Mr. Kazmierski. The motion carried unanimously.

3.C. Scope Statements

3.C.1 Request approval of the statement of scope for Board Order WM-01-13, the 2013 Wildlife Management Spring Hearing rule proposals, including restrictions on training dogs in tracking and trailing wolves and also for emergency dog training rules under ACT 169

Scott Loomans, Wildlife Regulations Specialist stated that this is a rule that the department is planning to discuss with the Board at three meetings – scope approval, hearing authorization which is really the spring hearing agenda approval, and then adoption. He did not go through point-by-point except to talk about dog training. As far as number 11, the permanent part of dog training rules – dogs that will be used to hunt wolves. The department is thinking about something similar to what is in place for bear dog training right now so that would be a restriction on the number of dogs, a seasonal restriction, and dog identification. We are always listening to ideas that have come and will be coming. The department also has provided an option for emergency rule writing for approval of emergency rules that would be in part from this approval and in part from approval of the Act 169 rules that the department already has written that have emergency authority and which the Judge had said should have included dog training regulations. He offered that Tim Andryk, DNR Legal Services Bureau Director, would like to address the Board regarding the wolf Portion of the item. (Handout)

Tim Andryk, Legal Services Bureau Director briefly told the Board about the court decision and how it affects this scope statement. On August 31, Judge Peter Anderson, Dane County Circuit Court, enjoined the use of dogs for hunting wolves and for training dogs to hunt wolves. He basically said the department did not adequately consider the concerns regarding dog use and the

concerns raised by the plaintiffs in the lawsuit which are in the affidavit. The Judge said that the department needed to go back to the Board to adequately consider that the issues regarding the use of dogs and perhaps impose additional restrictions in the emergency rule. The Judge stated the department did have the authority to include in the emergency rule restrictions on dog training and basically strongly suggested the department do so. He said that even if the Board decides to not make any additional changes or impose any additional restrictions this year to the emergency rule, we would be entitled to due deference in the court if the department and Board considers the concerns of the plaintiffs and address them either through response from department staff and through testimony, we would be entitled to due deference. The Judge said that it was the department and the Board's decision to make whether additional restrictions on the use of dogs were necessary for this year. The department needs to get a record to the judge to show that there was this discussion and it was a discussion on addressing concerns of the plaintiffs. In that regard, the department also has a couple of wardens here who have spent their lives hunting with hounds and have worked closely with the hound hunting community of northern Wisconsin. They are here to answer questions also and to give a background on how people would use hounds to hunt wolves and the risks involved, if the Board is interested in hearing that.

Chair Clausen stated to Attorney Andryk that a correspondence memorandum was handed out last night (Tuesday, September 25, 2012). He asked whether that was meant to be a basis for discussion during the presentation or whether that was to be part of the Board discussion after we hear public testimony.

Attorney Andryk responded either way. It was meant to provide additional background on this scope statement and also add to the record going back to the Judge to say this is our record that the Board considered this and whether to impose additional restrictions or not to impose additional restrictions. This is the information they had before them. This is what the Board considered.

**Mr. Bruins MOVED to remove the emergency dog training rules from Board Order WM-01-13 under Act 169, seconded by Mr. Hilgenberg.**

**Public Appearances:**

1. Rob Bohmann, Racine, representing WI Conservation Congress as Chair. He stated that he has a 7 year old Labrador retriever (Gander) who is not only his number one hunting buddy, but he is a member of their family. He has spent hundreds and hundreds of hours with him while hunting in the field. Since he brought him home when he was just seven weeks old, he has literally spent thousands and thousands of dollars on him in food, vet bills and training. He received his junior hunt title when he just eight months old, his senior hunt title when he was a year and a half old, and his master hunt title when he was two and a half years old. He is what hunters call a "college graduate." He comes to work with him from time to time, and he has been to his children's schools for show and tell. He comes along with them on all of their family trips that they take. When they come home from work or school, he greets them at the door with a kiss. When they are at home sick, he lays at their feet until they are better. More importantly, when he sees him carry his gun case up from the basement, he knows it is time for him to go to work. After all, it is what he was trained to do.

Now, he does know that he is not a hound, and he would not use him for hunting bear or wolves. But, he is just like any other hunter who appreciates hunting over a great dog. You see, it is not about the harvest of an animal or a bird; it is all about the dog performing the way he or she was trained to perform. Whether it is tracking and treeing a bear, flushing a grouse or pheasant, or retrieving a goose or duck from frigid waters, it is about the experience of hunting with a great dog. When they leave home with their dogs for a day's hunt, they understand there is always a risk involved. The vast majority of hunters who use dogs are ethical and would not put their dogs in harm's way intentionally. They understand that there is always the possibility that something may happen to their dogs, and when it does, they take full measure to ensure that their dogs are taken care of. When their dogs are accidentally hit by pellets while upland game hunting, they take him to the vet to get the pellets removed. When they step on a piece of glass in the parking lot they get them stitches in their paw. When they

get tangled in barb wire fence and rip their chest open, they take them to the vet for treatment. Or, when their dog breaks through the ice while retrieving a duck and struggles to get back on the ice, they go get them before they are drawn under the surface. He can speak on every one of these incidents from experience, because every one of them had happened to his dog, Gander. But the risk does not stop him from hunting with his dog. That is what they do when they hunt with dogs; it is what their dogs are trained to do, what they love to do.

He was here today because of concern regarding the hunting of wolves with dogs from some non-hunting groups. The department has worked tirelessly with hunting groups in establishing this season. The legislation that was passed this past spring which established a wolf season was not developed while sitting on a barstool. It was developed with the countless hours of discussion with many hunting groups throughout the state. They are not barbaric in any means; they are hunters who have a passion for the experience of hunting with a great hunting dog. The Congress is an advisory body to the Natural Resources Board. As Chair of the Congress, he urged the Board to support the approval of the scope statement for a permanent rule at the Spring Hearings. He also urged the Board to not proceed with any restrictions on the use of dogs in the emergency rule at this time.

No Board discussion followed.

2. **Al Lobner**, Milladore, representing WI Bearhunters Association. He stated that in the past they have heard testimony from wolf experts on what will happen when dogs track and trail wolves and what will transpire during the chase. Having worked with, and after following hounds for over 40 years, many times in the last 10 years having also trailed wolves, he has not encountered wolves stopping to fight with a pack of dogs. Although there is documentation on wolves depredating on dogs it is while they are at a bear tree, in someone's yard, or while out rabbit or bird hunting. We need to ask ourselves "Why does this happen". From his perspective and experience it is because the wolf views that dog as food. All of the dogs that are depredated on while bear hunting are usually barking while trailing or treeing a bear. This barking hound is easy for a wolf and her pups to find. Quite honestly they are ambushed and eaten for food because their natural food supply, deer, and whatever, may be limited and they cannot supply their pups with enough to eat at that time. Remember, these wolf pups during bear training season are just starting to travel with the pack and as all young do, can consume enormous amounts of food. They also are not efficient hunters; therefore, they rely on the pack to help supply them with food. Simply put, hounds standing at a tree, treeing on a bear are certainly an easy catch for any female wolf and her pups. Also bear in mind that dogs trailing game move much slower than deer that are trying to escape their predators. Hounds trailing game also are not nearly as aware, as deer that are continually being preyed upon by wolves. Once we get into the fall these wolf pups become better hunters and can contribute to their own well being by catching rabbits, coon, beaver and smaller species of game that they can handle by themselves. They also are faster, stronger and have a much better ability to hunt on their own or with the pack for that matter. Much like our hound pups they are becoming more efficient and can fend for themselves, for the most part, thereby taking pressure off of their parents to supply them with food.

As it gets later into fall and winter these wolf pups will begin to go off on their own for short periods of time. Many times while coyote hunting, dogs will run upon a lone wolf track. The wolf is a larger animal than a coyote therefore it will give off more scent, and because of this increased scent, hounds will many times begin to trail the wolf. It is my observation that wolves will run like other game, coyotes, fox, deer and bear, circling and using the wind, as well as variations in terrain and habitat, to evade the hounds. We know that hounds pursuing game will travel at about 7 miles per hour or less on the average. Wolves can easily sustain a gait of 20 MPH and above for long periods of time, making it highly unlikely for a wolf to be threatened by a pack of hounds. From what I have seen and experienced these wolves run and possess the same habits as a coyote and by using the same tactics that coyote hunters use, hunters will be able to harvest wolves with no adverse effects to their dogs.

Chair Clausen asked Mr. Lobner to wrap up his testimony.

In his experiences, he has never seen a wolf turn to fight with a dog while it is being chased. He has seen and heard of plenty of dogs being ambushed while trailing or treeing other game. However, these wolves that depredate on dogs are simply hungry and trying to survive. Thank you. (Handout)

Mr. Kazmierski stated that one of the claims that the plaintiffs made in the lawsuit was that the Humane Societies would incur the cost and expense of taking care of these dogs that are beat up by the wolves. In your experience of a hound hunter, and he knows that hounds get hurt, would you guys dump a dog off at a Humane Society?

Mr. Lobner stated he did not know anyone that had ever done that. Quite frankly, that is news to him.

Dr. Thomas stated she assumed Mr. Lobner's dogs were collared in some way. She asked what kind of collars his dogs specifically wear.

Mr. Lobner stated that along with the main collar, he also runs telemetry collars and GPS collars at the same time.

Dr. Thomas asked whether he is running a GPS collar and also a shock collar on them.

Mr. Lobner corrected, telemetry.

Dr. Thomas asked whether you typically use shock collars like bird hunters do.

Mr. Lobner stated that he does sometimes with his younger dogs but generally the older ones, no.

Chair Clausen stated that he will hold speakers to the three minute limit and would appreciate that speakers do not make him tell them to quit.

2. Barbara Thomas, Menomonie, representing the Sierra Club. She thanked the Board for their thoughtful discussion last evening on the sand mining issue. That is huge to them in their town. The Sierra Club is committed to maintaining the world's remaining native ecosystems -- marine, aquatic and terrestrial. This is a moral and ethical obligation that all people share, as all living organisms and their natural ecosystems possess intrinsic, spiritual, and ethical values that cannot be measured in human economic or utilitarian terms. To that end, the John Muir Chapter, Sierra Club has serious concerns regarding the use of dogs in tracking and trailing wolves, which may pose threats to human health and safety, as well as threats to pets, livestock, and wildlife.

The Sierra Club believes lethal management and control of wildlife should be targeted toward individual problem animals and that such methods should discourage and prevent conflict between humans and wildlife. The Sierra Club opposes harvesting techniques that fail to minimize suffering and harassment. Dogs may be indiscriminate in pursuit and attack as to age and number of species, posing unnecessary risk to the young of the year and non-target species, including game animals which are not legal to hunt with dogs. It is impossible to prevent wolf/dog conflict, while dogs are unrestrained and often miles away from handlers. Recent research from the University of Montana Wolf Project indicates that wolves make the defense of young a top priority and will fight to the death in defense of their young. The John Muir Chapter believes it is inappropriate to risk disruption of breeding and depredation of wolf pups by hunting dogs.

In terms of economic scope, the John Muir Chapter feels that depredation payments for hunting dogs which are voluntarily run, off-leash, in known wolf habitat are inappropriate and unsustainable, and they should thus be discontinued. Hunting dog depredations payments, \$44,000 last year alone, have comprised the highest category of depredations cost to the state during wolf recovery. The Sierra Club believes acceptable management approaches include regulated periodic hunting when based on sufficient scientifically valid biological data. Since dogs are allowed to hunt wolves in no other state, the John Muir Chapter has grave concerns about any regulations which the NRB seeks to pass, implement and enforce under an "Emergency Rules" measure. Since wolf hunting will occur in the most remote places of the

state, the John Muir Chapter has serious concerns about enforcement. With 40 current warden vacancies, it is unclear whether present WDNR staff can effectively enforce regulations during the upcoming wolf season.

The Sierra Club opposes the use of captive or injured wildlife for sport hunting and the training of hunting dogs. They suspect that this could occur if Act 169 is allowed to proceed in its current form, and this creates grave concerns. They urge the Board to do everything in their power to avoid allowing the use of dogs in wolf hunting this season unless and until the serious concerns detailed above, including breeding season interference, potential wolf/dog conflict, and difficulty with enacting and enforcing effective emergency rules in a very limited timespan, are adequately researched and addressed. (Handout)

Mr. Kazmierski asked Barbara Thomas to explain the human health risks with this.

Ms. Thomas stated the danger to the hunters themselves who could be harmed in an attack. As a retired nurse, she can tell you they want no animal attacks on people.

Mr. Kazmierski stated he did not know of any cases of a human being attacked by a wolf and if there is he would like to know that.

Ms. Thomas stated she would follow-up with the Board.

3. Scott Meyer, Gleason, representing United Sportsmen of WI. He called to say he was at the wrong Ramada and will arrive late. He asked that the Board hear his testimony when he arrives.
4. Amy Visger, Minong, representing self. She called to say she was with Scott Meyer and would arrive late. She asked that the Board hear her testimony when she arrives.

Chair Clausen approved the request of Scott Meyer and Amy Visger. He asked Ms. Ericksen-Pilch to the podium.

5. Marie Ericksen-Pilch, Phillips, representing self. She and her husband reside in Price County and they have been co-coordinators and trackers on a volunteer basis for WI DNR since 1999. They co-coordinate region 5 in Price County and surrounding areas. She works in the woods alone from April through October and has a pretty good knowledge of the back roads. She owns a small farm and has a number of animals. She lives in wolf country. She is here today to talk about the training and hunting with wolves with dog. She strongly opposes it. Number one is the cruelty issue to dogs. As it is now, hunters are allowed to train and hunt bear, bobcat, cougar, raccoons, with dogs. When dogs are trained, they chase the animal. During training, the owner can come in and call the dogs off and the dogs are stopped. Wolves do not climb trees and wolves are not coyotes. Coyotes are a separate animal. The wolf pack structure is how it lives. Without the pack, wolves do not live. For a short period of time, they are dispersed. They usually will not survive without the pack structure. The cruelty issue is where it would allow actual canine-dog cruelty by fighting. It will occur. A lone track is not always a lone track. Wolves put out direct distribution which means one track on the land may be one plus animal. It could be two animals. It could be three animals. It is hard to determine that until you follow that trail sometimes for quite a while, one is not certain until you follow for a while. That is an efficiency that they do. In regards to wolves, the cruelty issue in her opinion and an opinion written, is the stress factors on the pack. The timeframe for this hunt is October through February, with dogs starting at November. That would cause a problem on the pack structure by allowing stress to interfere with breeding as it is just hunting without dogs, because wolves breed from January until about the end of February and beginning of March. Wisconsin will have hunting on the landscape as it is which might interfere. An alpha taken from one pack does not just go to another pack and pick up another alpha. It is a system that has fine-tuned the wolf to survive. We (hunters) are going to be in the process of disrupting that. With dogs added, it is going to cause more disruption and more stress on the pack which we do not know right now.

Chair Clausen asked Ms. Ericksen-Pilch to wrap it up.

The hunting and training timeframe would be right in the middle of the deer season which many people (deer hunters) would disagree.

6. **Gregg Brzezinski**, Allenton, representing self. He requested the Board forward the wolf hunting rules as written by the legislature with no additional amendments. There has been a lot of comments from so called wolf experts about the consequences of trailing wolves with hounds. Although these people may be experts on wolf biology and habits, they do not seem to have the experience in the real world of trailing hounds. We have certainly heard all the horror stories of animals being killed and eaten by wolves but this usually happens when people are unaware of wolves in the immediate area. In the real world of hound hunting, hunters will search out game that will be easier to track and trail normally in smaller sections of land. There will be hunters in direct contact with the hounds to help with getting the track jumped. There also will be other hunters in areas of known escape routes. This also helps to keep the dogs within close proximity of the hunters to minimize unnecessary and unwanted situations for the hounds. Another tactic used by hound hunters is to determine the number of animals in given areas and after that determination is made to choose the area that has the least amount of risk and the best chance for success. Having hunted with hounds for years and knowing how long it takes to train a hound to perform to a high level of efficiency he really cannot understand why anyone would put their dog in harm's way. It simply takes too much time to get a hound trained to take that risk. These assumptions made by the wolf experts are just that. They are assumptions of well-meaning but unknowing people. There have been situations in the past where hounds were killed by wolves but these situations happen when hunters are unaware that wolves are in the immediate area. When hound hunters are aware of the number of wolves in an area they can eliminate the unnecessary risks.

**Ms. Wiley** asked Mr. Brzezinski how you would shoot a wolf if your hounds are pursuing it. It is not like a pointing dog where they are going to stop.

**Mr. Brzezinski** stated no, they do not hold it. They get ahead of it. They can bay them like a bear. They can walk them. You can get ahead of them and shoot it just like a bear.

**Ms. Wiley** asked whether you are using bear hunting techniques.

**Mr. Brzezinski** responded it would be similar. Every wolf run is different as is every bear run. Sometimes you have to call the situation as it presents itself. Some bears tree and some bears do not. They shoot bears on the ground too.

**Mr. Hilgenberg** asked Mr. Brzezinski how long he has been hunting with hounds?

**Mr. Brzezinski** stated about 20 years.

**Dr. Thomas** stated she has a dog and hunts bird and has never done this. You can help her understand how there will not be necessarily dog and wolf negative interactions at the end of the hunt by telling me the scenario. How will the hunt end? What happens at the end? Her dog will point a bird. She will either flush it or the bird will flush. Sometimes the dog catches the bird. What is likely to happen at the end of the wolf hunt?

**Mr. Brzezinski** stated that ideally they will bring the wolf up to some of the hunters ahead of the pack of dogs and shoot the wolf ahead of the dogs or like a bear, they would bay it and slow it down enough that you could get there and shoot it.

**Dr. Thomas** questioned whether there would be a potential for like – standards of drivers?

**Mr. Brzezinski** stated to some extent, yes.

**Dr. Clausen** stated to Attorney Andryk that this sounds to him like group hunting. He asked whether Act 169 authorized group hunting for wolves.

**Attorney Andryk** stated it was silent on group hunting.

**Dr. Clausen** stated then that it did not authorize group hunting.

**Attorney Andryk** stated that group hunting is defined by someone being able to shoot a wolf if someone else has a tag. It did not allow for that. There would be under Act 169 no violation if someone is being assisted by someone with hounds to hunt wolves as long as the person who has the license with tag shoots the wolf.

Dr. Clausen asked whether the other people are authorized to carry weapons.

Attorney Andryk stated they can carry weapons for other purposes but not for the purpose of shooting a wolf.

Dr. Clausen confirmed that basically, the only person that is supposed to be shooting that wolf is the person that has the tag.

Attorney Andryk responded absolutely.

Dr. Clausen stated that under that scenario, that sounds like it will be tough to make sure the guy with the tag is in the right spot from his experience.

Attorney Andryk stated they have two wardens here that can address that.

7. Rad Watkins, Hazelhurst, representing Timber Wolf Alliance. He was not in attendance.
8. Larry Murphy, Butternut, representing self. He was not in attendance.
9. Jane Belsky, Necedah, representing self. She was in attendance but did not testify. (Handout)
10. Larry Murphy, Butternut, representing self duplication
11. Mike Belsky, Necedah, representing National Wolfwatcher Coalition. He stated he was at the meeting with his wife Jayne. They are lifetime Wisconsin residents and volunteer wolf trackers since 1998 and are both lifelong hunters. Regarding 3 C1, they are against the approval of this scope statement to enact emergency training regulations and permanent rules for training and using wolf hunting hounds. The Act 169 emergency rule continues to rush headlong into temporary wolf hound hunting/training rules and then wanting to make them permanent. This shows a total disregard for the fact that this will produce deadly and dire consequences for these hounds. If you allow wolf hunting hounds to go unleashed and set the training period to coincide with bear hound training, you are about to put into motion an unenforceable, socially unacceptable and dangerous scenario.

He asked the Board to sit down with a hunting regulation pamphlet and take a long look at the number of hounds already pursuing a myriad of wild animals in our woods within the same timeframe. You will find it to be almost impossible to enforce any regulations intended to ensure the safety of the wolf hunting/training hounds other than on a leash.

Presently there are 40 DNR warden vacancies in the state and no money to cover overtime. Last year during deer season there were many days when the only people out there were hunters because the wardens were out of funds. This leaves an overburdened wildlife law enforcement contingent to try to enforce complicated laws. With all the overlapping hound seasons, how will they be able to clearly define who is chasing what? Wolf hunting hounds are to be exempt from depredation payment. When the inevitable happens and a hound is killed by wolves the question will be, were they wolf training, bear training, or just hounding coyotes, raccoon, bobcat or fox? The payment for hound depredation must cease. The program is full of holes and is unsustainable by selling the lives of our wolves to pay for it. Maybe it is time to require bear, bobcat and coyote hounds to also be leashed to avoid cruel death and suffering. You allow hunting hounds compensation for death by wolf but do not allow compensation for a pet or even a child caught in a trap which you allowed to be placed on the landscape.

Compensatory equality for all citizens and their animals certainly is not represented by this DNR. It has been made perfectly clear in the past few months that you do have the authority to hold off on hunting with hounds until a full review of all aspects for both training and hunting can be studied in-depth. While you are directed to exercise authority and responsibility in accordance with governing state laws remember those laws also include WI Anti Cruelty Law 951.01 and it defines Cruel as "causing unnecessary and excessive pain or suffering or unjustifiable injury or death". It is an undeniable fact that wolf hunting hounds will be exposed to that very scenario unless critical protections are put in place. It is your responsibility to see that happens. They would like to see rules become illegal... (Handout)

Mr. Kazmierski asked whether Mr. Belsky is suggesting that all dog hunting should be

eliminated.

Mr. Belsky stated no sir.

Mr. Kazmierski stated you kind of mentioned that.

Mr. Belsky stated that the DNR Board review hound hunting practices in the state to make sure that it does not impact the anti-cruelty laws and that it can be done in a safe manner and a quick kill as possible on the prey.

Mr. Kazmierski asked that if he was grouse hunting and his dog gets attacked by a wolf, would that be the same kind of cruelty.

Mr. Belsky stated that would be up to the Board to review.

Mr. Kazmierski then questioned Mr. Belsky whether he was familiar with those guard dogs that were being recommended for protecting livestock and whether those dogs were typically leashed.

Mr. Belsky stated no.

Mr. Kazmierski asked how then do they actually guard the flock.

Mr. Belsky stated they have a territory that they stay in.

Mr. Kazmierski stated that in essence, we are presetting up confrontation by the use of those dogs. That is what they are designed to do.

Mr. Belsky stated they are protecting a territory. He believes that the wolves will not come into that territory. They are urinating, marking, and defending their flock which holds the wolves off.

Mr. Kazmierski stated that they are unleashed and left out there 24/7.

Mr. Belsky stated correct but they are not running at large.

Dr. Clausen asked that Mr. Belsky to state exactly what things you said were necessary. Please end at the end of that.

Mr. Belsky listed the rules they would like to see become illegal, as follows:

- A. Training wolf hunting hounds with the use of any live captive wildlife (in roll cages or otherwise).
- B. The practice of wounding a wolf and allowing the hounds to bite, harass and torment that wolf.
- C. The use of hounds as decoys or bait animals to draw wolves.
- D. Train or hunt wolves unless the hounds are on leash.
- E. The DNR must require that hound hunters FIRST obtain a Dog Training Permit which (1.) confirms and complies with appropriate breed restrictions (scent hounds only), (2.) demonstrates compliance with training programs for dogs AND handlers in pursuit of wolves on leash to ensure no direct contact with a wolf and (3) would rule out the use of disposable shelter dogs.

12. Kendal Durham, Neillsville, representing self. He stated that he has owned, raised, and bred trailing hounds for over 30 years so he believes he is qualified as close as experts can be on this. He lives in Clark County and has been on many accidental runs, which he will call them. No problems. The wolves run. It has only been a single wolf. He applied for a wolf license hoping he could run his dogs to harvest a wolf. He did not receive one. He does not see any reason to reinvent the wheel to rush through a rule which in his opinion does not qualify as an emergency. There is no need for further restrictions. The so called expert testimony given in the past is not based on actual hunting experience but emotions and what if scenarios. Real life hunting experiences have known that every time that dog leaves your hand, you take the chance of not getting that dog back. They could get hit by a car, caught on a fence. You never know what is going to happen. He does not care what you are running if it is your beagle, your bird dog. You take that chance with your dog leaving your hand. Nobody who hunts with trailing hounds would intentionally find a large pack of wolves and put their dogs on it. They are going to try to single out that single individual animal to run. He does not need to be training dogs in the summer months on wolves. It is common sense. Why would you do it? They are running bear in the summer which is their main species. To run wolves, they like



snow on the ground so you can find the individual track. With no snow in the summer time, how would you know what you are putting on? It is just common sense. Why would you put your dog at risk for no reason? This Board needs to take into consideration that sometimes hunters do not need a bunch of rules to have common sense.

Ms. Wiley asked Mr. Durham when he would recommend training dogs for wolf hunting. What season?

Mr. Durham stated personally for his own self, his training would take place during the season.

Ms. Wiley questioned what if the Board is required by statute to have a training program, when do you think the best time would be to do it.

Mr. Durham stated probably with what the rules are placing now, he guessed, July – August, something like that.

Mr. Cole asked Mr. Durham to put a price on his dogs.

Mr. Durham stated it varies. A good seasoned, experienced hound about \$10,000 to \$15,000. You have generation chances to breed. Maybe a lesser dog \$500, you know, it is the market of supply and demand and the ability of your dog.

Mr. Kazmierski stated that the Board has had expert witnesses testify that are experts on wolves. He is considering you guys the experts on dogs. He asked for a brief background on how much time is spent training dogs, hunting with dogs, and for how long?

Mr. Durham stated that it is basically a year-round activity. Probably 200 days a year. He takes the dogs coon hunting at night after work, the bear training season July and August. It is every Friday, Saturday, Sunday. If you do not put time into these dogs, they will not develop

into a quality dog. You cannot take a bird dog out two times a year to point bird. You have to put time in, lots of time. It is more than a hobby, it is your life.

Ms. Wiley added that it is a passion.

Mr. Durham stated yes.

Mr. Kazmierski asked Mr. Durham that if he had a dog injured, whether he would take it to the Dane County Humane Society for treatment.

Mr. Durham stated no. He has a local vet that sees all his dogs. State law says they have to have rabies shots. All the shots occur, up to date. All through a licensed vet. Most of the hound guys you talk to, their dogs are treated better than their kids. That is what a lot of people say.

Mr. Kazmierski stated they are your kids. He then asked Mr. Durham to explain to the Board the whole scenario that happens when a dog gets on a wolf and what occurs and when the opportunity is to harvest the wolf. They had one person clarify but it should be reiterated. Mr. Durham stated how it all basically breaks down, your dog is pursuing this wolf. The wolf is running hot. The dogs are running behind it. With the telemetry equipment and the hearing of your dogs, let us say they are going north. They get to the north road or trail or whatever. You get heading them dogs about ½ mile, 400 yards, 500 yards, whatever you can. Your person is going to shoot the wolf. Position yourself so the dogs are coming towards you. If they are coming your way, it is time to load your gun. As that wolf comes through you get a clean shot at it. If not, the race continues on. It is a game of cat and mouse is what they are going through.

Mr. Kazmierski asked whether these wolves are running hell bent for election or how do they move through.

Mr. Durham stated that the runs he has had, the wolves have been two – three minutes ahead of the dogs, up to one mile ahead of the dogs. You do not know. Every animal runs different but he will say they run. They have never stopped to turn, bloodshed. One incident he had last winter running coyotes. He thought they were running coyote. They were running wolf. He got in the woods. That wolf was walking in front of his dogs. They respected the animal.

They were back about 10 yards, just baying it, walking behind it. That wolf just walked and did what he wanted. Those dogs just followed that animal and barked at it. He got on the track and got the dogs in between them but the wolf is not scared of people. It comes right by you. You just cut your dogs off and catch them.

Mr. Kaznierski asked since he had some encounters with dogs on wolves, whether he ever felt at risk.

Mr. Durham stated no and the reason he said that is like he said before. It is a chance you take. If he is going to limit his hunting to hunt in an area as a space where there is wolves, he would like someone to show him in the state of Wisconsin where he can do that sport and not encounter wolves.

Dr. Thomas stated that when she hunts her bird dog and the bird flushes and she misses it which is a lot of the time, to get her dog back she either whistles or command over. If he does not pay attention to her then she zaps him with the shock collar so he does not use up all his energy chasing a bird or heading towards a road. When you get to the end game when you want to corral your dogs, how do you control the dogs? How do you get them to come back to you?

Mr. Durham stated for one, if you are going to shoot at the wolf and you miss it, the game goes on. It is a matter of where that wolf crosses the road, crosses the trail, you cut that dog off and you catch him. You might have to run them down and tackle them because a good dog does not quit until the end. He is fired when the game is over.

13. Patricia Randolph, Madison, representing self. She was not in attendance.

Chair Clausen asked Scott Meyer to the podium.

3. Scott Meyer, Gleason, representing United Sportsmen of Wisconsin. He stated he has owned and trained and bred hounds from 1979 to 2009. In that 30 year time frame he does not recall any former DNR employee ever stepping forward and claiming to be an expert on tracking and trailing hounds as was claimed in the last hearing, not even having owned one. This is a new experience for him. He is an avid hunter and has been fortunate to be able to experience everything Wisconsin has to offer from predator hunting with dogs to duck hunting to deer hunting, trapping, and fishing. In that almost 40 years of hunting experience, he has spent a lot of time trying to figure out animal behavior in a hunting situation as most hunters to including several of you Board members. Saying that he still has not been able to point blank been able to predict if an individual bear, bobcat, raccoon, fox, or wolf will attack, fight, or injure your dog as some here will try to claim it will happen. It is a ridiculous claim which no one can make and still have credibility. These are wild animals which are not predictable. As a dog owner with hunting dogs they make every effort to protect their dogs including non-hunting dogs which several of them own.

There is always a risk of using dogs when you are hunting but that is what they are bred for and trained for. The dogs live to hunt. As a dog owner it is his responsibility to care for that animal. They all have veterinary care whenever they are injured, hurt, and preemptive care such as shots. While there is a claim that these dogs would be taken to an animal shelter if attacked and injured by a wolf he did not know of any hunter, and he has hunted with several hundred dogs, that has ever taken their dog to an animal shelter versus a veterinary clinic. It is a very far-fetched claim. Tracking and trailing hounds have been used for centuries and is not a new thing. People who own hounds have an extreme amount of knowledge of their sport and have practical common sense which far outweighs any rule which you would implement. There needs to be no further restrictions since I do not believe there has been one case of a dog being killed or injured this year training on wolves because common sense as alluded to before tells these guys not to put down on a track until there is snow on a ground to tell you if it is a single wolf rather than a pack. As an owner of trailing hounds, this Board needs to understand that thousands of hours go into the training of these breeds. It is a lifestyle, not a hobby. The rule before you today he believes violates Act 21 and he does not believe this Board has the authority to act on this rule. The legislature was clear on what emergency rule promulgation

was to be allowed by the department. He further believes it violates their right to hunt fish and trap constitutional amendment as well and asked this Board not to act on this rule.

Ms. Wiley asked Mr. Meyer whether he said something about training his dogs to track wolves. She asked whether he has done that now or did she misunderstand him.

Mr. Meyer stated that training has been around for about eight months now.

Ms. Wiley stated she could not locate this in Act 169.

Attorney Andryk stated that when wolves were on the federal Endangered Species List, it was prohibited to take them. The definition of take included harass, disturb. You could not lawfully train dogs on hunting wolves while federally listed. There was no state law that prohibited it. When wolves were delisted on January 27, 2012, you could lawfully train dogs on wolves starting January 27, 2012. He did not know how many people know that and took advantage of that but legally there is no prohibition on training dogs on wolves since January 27, 2012.

Ms. Wiley questioned whether the Board was told this at that time.

Dr. Clausen stated the Board was told they could not deal with that at the May 2012 meeting.

14. Rodney Helgeson, Warren, representing self. He stated he supports the ability to hunt wolves with hounds. He is a member of the Bear Hunters Association. In the winter he hunts farm country next to Fort McCoy and the state forests in Jackson County. They have some really big pines that they cast their dogs into for coyotes. Probably the third time they do that and they wind up on a wolf. They will try to catch them as quickly as they can. They have never had dogs injured or not event really close. They are usually out quite ahead of them. Probably run in the last five years to six years, run into about five wolves by accident. They catch the dogs as quick as they can catch them. He has been hunting coyotes for 20 years. He has been with the WI Bear Hunters Association for 30 years and on the Board of Directors for six years. He has been hunting with hounds for around 30 years. They are his buddies. He would not put them in any harm. He would like the ability to be able to hunt wolves with hounds.
15. Patricia McConnell, Black Earth, representing UW-Madison Department of Zoology as Certified Applied Animal Behaviorist and Adjunct Professor. She stated she absolutely understands the hunters when they say that they love their dogs. She gets it. She has working dogs. She has had livestock guard dogs. She has had many, many dogs that have accomplished a difficult task with her. If you have not done it, it is amazing. It is a magical connection that you can have with an animal. She gets it. She also gets the excitement of the chase. She is not a gun hunter but she has been on safaris in Africa. When over the radio someone says there is a lion pride trying to take over a kill from a bunch of cheetahs, you crank the wheel on the land rover and your heart is pounding. It is so exciting. I get the emotions and I get the excitement but emotion and arousal are not good ways to make carefully thought out decisions. That is why every sport has governing boards that act to protect the members of that sport or any individuals involved in it. In this case, all the individuals of Wisconsin are in a way, involved in this sport. Every one of us, because of the laws of the land owns an equal share of every wolf, every coyote, every porcupine, and everything there may be, it is all ours. It is a unique part of our country. It is very, very special. That is why you of the Board, have got to stand up to what is a very small group. It is a very small subset of the hunting population who want to be able to run their dogs on wolves.

Their argument to you today and in times past, that wolves do not kill dogs. Except before wolves were delisted and wrangling for the wolf hunt to occur, they argued that one of the reasons we need to control the wolf population is because wolves kill dogs and they do. We know that. It is indisputable. It also is indisputable, and I think most members of the state of Wisconsin did not know this, that bear hunting dogs are often badly injured by bears. Somebody said they love their dogs more than they love their kids. That is a concern because she would not send her children to go engage with a bear. She drank the Kool-Aid. She used to think that bears always climbed trees but they do not. Hundreds of them end up in that place. She just interviewed a veterinary from the north who said without question over one

hundred dogs a year go to a particular vet clinic to be stitched up after being injured by a bear. There are a lot of issues here. This is a Pandora's Box. There is a morass of conflicting and confusing information. Somebody needs to be outside the bubble of emotion and arousal and make some well-considered decisions. (Handout)

Mr. Kazmierski asked Ms. McConnell if she believes, as an animal behaviorist, whether a prey animal, in this instance the wolf that is being hunted, is going to act differently than he acts when he is hunting like in the case of wolves attacking bear dogs.

Ms. McConnell stated she thought it was Scott Meyer that said that wild animals are unpredictable. Nobody can say exactly what any individual wolf is going to do. What she suggests is probably clear is that some wolves, as some have, in some context will turn and engage with dogs. Some dogs will attempt to engage with wolves. Go onto [www.youtube.com](http://www.youtube.com) and watch dogs ripping coyotes into shreds. Some wolves have been known to attack dogs. Some dogs have been known to attack wolves. Some dogs are going to run away. The idea, the concept that there is always going to be this carefully structured, managed hunt in which dogs with GPS collars are running after one single wolf and one single wolf only, if you know it is only one single wolf because we only see the tracks of one single wolf so there could not be any other wolf anywhere around. They are going to follow that and then the seas will part and the wolf will stop and the dogs will stop and then the hunter can get there and shoot the wolf. That might happen on occasion. But it is not going to happen all the time. There are going to be violations. There already are violations of the animal. There is a cruelty act in the state of WI. There are laws against unnecessary pain and suffering. They are not frankly being followed now. This will make it worse.

Mr. Bruins stated to Ms. McConnell that based on your testimony you are opposed to using dogs for hunting wolves.

Ms. McConnell stated yes she is.

Mr. Bruins stated that pretty much this is based on your concern of the dogs getting injured or at worse getting killed. He questioned whether it would follow then that you would oppose to hunting bear with dogs?

Ms. McConnell stated in a perfect world, if people could hunt...

Mr. Bruins stated no, not the perfect world stuff. There is not such a thing.

Ms. McConnell stated as so noted and to be, remember, we are talking about the perfect world in using dogs to hunt wolves. She would not have known how to answer that question until lately. Because of this issue, she learned so much. Frankly, she is almost sorry she learned it. She did not know you could put a coyote or a bear cub in a roll cage and let animals attack it. That is legal. She just learned that through this process. Every single person she talked to...

Mr. Bruins stopped her and went back to his question as to whether she would be opposed to hunting bear with dogs.

Ms. McConnell stated she is now based on what she learned so maybe one of the good things that could happen is that light is going to shine on some of the things going on. She did not know. Now she does.

Mr. Hilgenberg asked Ms. McConnell whether she is opposed to hunting.

Ms. McConnell stated absolutely not. She is a biologist. She is a zoologist. She is not in any way opposed to managing a stable population so it is sustainable. She has deer hunters on her own property. She raises lambs. She is not an animal rights activist. She is concerned about animal welfare and the wildlife of the state of Wisconsin.

Mr. Kazmierski questioned Ms. McConnell that as a biologist, whether she sees any upside to using dogs to hunt particular wolves.

Ms. McConnell stated no. The only exception she could imagine is for some reason -- well she could not imagine. Basically what seems to be reasonable, and this should come from a wolf biologist. It is just common sense to her, although common sense is not always very common. It seems to be common sense that if there are particular packs that we know are making serious depredations on a particular agricultural enterprise, she has to be fair, she

knows what it is like to defend your animals from wild predators. If there is a particular pack that people have tried and tried and tried somehow to eliminate and for some reason no one knows how to track animals anymore, for some reason no one can control the population, then perhaps it could be considered but that would be the only, only possible scenario and she could not imagine that happening.

Mr. Kazmierski stated that it could be used as a potential tool.

Ms. McConnell stated dogs were not tools. Screwdrivers are tools.

Chair Clausen asked Amy Visger to the podium.

4. Amy Visger, Minong, representing self. She stated she has owned and hunted with hounds for 16 years and has been listening to so called experts that were former DNR employees and is offended by their comments. As a dog owner, she takes pride in raising and training her dogs. To think that she will put her dogs out on wolves without regard to their safety is simply not true. The fact of the matter is they will put their dogs down on a single track with snow conditions to ensure that their dogs are safe from a pack situation. There has been a lot of misinformation on how tracking and trailing hounds are used. The name actually means just that, they put a dog on a track and they trail it until the wolf is jumped. They then get ahead of the chase to intercept a wolf or bear or bobcat and harvest the animal. To those of them who are the real experts on hunting with hounds this has become a subject, which is much to do about nothing.

They know there is always a risk to their dogs the minute they unsnap their leash, no different than a duck hunter knows there is a risk to the dog drowning or a bird hunters dog getting hit by a car. they minimize these risks by knowing and checking how many wolves are in a section of land and putting out on a single track which is the same thing they do with other predators such as coyotes or bears. Hounds have been used for centuries to hunt predators and have been bred to track and trail game. No further restrictions are necessary. They, as hound hunters, know what they are doing and to have non-hunting forces trying to dictate how they hunt is ridiculous at best. Therefore, she asked the Board to reject this rule.

Mr. Kazmierski asked Ms. Visger whether her dogs ever got on a wolf track by accident.

Ms. Visger stated during bear season they had their dogs come out to a road. They always check tracks to make sure they are running bear and they found wolf tracks.

Mr. Kazmierski asked whether she was personal at danger as has been asserted by the lawsuit.

Ms. Visger stated no.

16. Ralph Fritsch, Townsend, WI Wildlife Federation (WWF) Wildlife Committee Chair testified in support of Board Order WM-01-13, a rule scoping statement which includes rules establishing restrictions on training dogs on tracking and trailing wolves and also emergency dog training rule under Act 169. The WWF includes 17 dog related organizations in the 184 hunting, fishing, trapping and forestry-related groups belonging to the Federation. The Federation has many experienced men and women who hunt with hounds. They firmly believe that training dogs to hunt wolves and the hunting of wolves can be accomplished in a humane manner. Groups that disagree with that position have convinced a Circuit Court Judge that such hunting and training requires the adoption of rules to govern such hunting and training. And that is why we are all here today on this Board Order.

Attached to his testimony is a letter from the WWF sent to Secretary Stepp after the recent court preliminary injunction in which they state "...the Federation is greatly concerned about the affidavit testimony submitted by the plaintiffs in the recent litigation. It is their belief that the affidavits present an inaccurate and unfounded presentation of the consequences of hunting wolves with dogs in the state. WWF and he suspect other hunting organizations are willing to assist the department in presenting a more accurate and balanced perspective on the hunting of wolves with dogs. It appears Judge Anderson would welcome hearing the other side of this issue. Please let WWF know if their help is welcome to advance the other side of the story." They continue to extend their hand to the department and this Board to assist in developing reasonable regulations governing wolf hunting and training with dogs.

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Experienced houndsmen in the Federation like Dick Baudhuin and Corky Meyer are willing to share their advice and counsel. They do not question the sincerity or demonize many who oppose hunting wolves with dogs but do seriously question their experience and knowledge of hunting predators with dogs. The Federation is very willing to assist in filling that knowledge gap. (Handout)

Mr. Cole asked Mr. Fritsch as to whether WWF surveyed the membership of the WWF.

Mr. Fritsch asked Mr. Cole to clarify as to what issue.

Mr. Cole stated on this particular issue.

Mr. Fritsch clarified, on support?

Mr. Cole stated yes.

Mr. Fritsch stated the support was brought up at their last annual meeting and they stand in support of the proposed Act 169 and they did. It also was supported by the executive board of the WWF.

Ms. Wiley asked Mr. Fritsch whether there was much discussion on hunting with dogs.

Mr. Fritsch stated yes there was. It is a very controversial issue. There are pluses and minuses yet we felt it was their position and they still support their original position to support the act as written.

Chair Clausen asked whether Rad Watkins or Larry Murphy were in attendance. They were not so he continued with Dick Thiel.

17. Dick Thiel, Tomah, representing self. He stated that wolves are a wildlife resource and should be treated with the same respect sportspersons apply to other game animals. He appeared today once again to appeal to the Natural Resources Board to incorporate into this wolf hunt some modicum of respect for this animal. Hound hunting is not crucial to the goals of Act 169 to reduce the Wisconsin wolf population and provide recreational opportunities for hunters and trappers. Use of hounds in hunting and training will result in bodily harm, pain and death to wolves and privately owned hounds precisely because of the unpredictability of the situation. He has reviewed all the DNR's 192 death dog reports and injured dog reports. His judgment of those reports is as follows:

- (A) It is inappropriate to allow training during the pup-rearing season (April through September). Intrusions by hound packs will be challenged by resident wolves not because they eat dogs because they are hungry but because they are territorial and are protecting their pups. This will likely increase injuries to wolves and dogs and may likely lower pup survival rates. Adopting the 365-day coyote training period is far too excessive. Training confined to a one week period immediately following the Deer Gun Season would eliminate these conflicts and would also minimize conflicts with trappers who will likely begin their activities once pelts prime in December – January.
- (B) Specifically to training. The number of hounds used in training should be limited to 6. Individual hounds should not be changed out as this gives unfair advantage to hounds and exhausts wolves. Again, constituting unnecessary harassment of wolves.
- (C) Training should be confined to daylight hours.
- (D) Trainers may not use caged captive wolves, injured wolves for training hounds.
- (E) Hound hunters training or hunting should be required to carry back-tag identification. This is required for other types of dog training trials and for hunting deer.
- (F) Hound hunters should be required to receive certified training. This is not precedence setting. The WI Trappers Association – in cooperation with the DNR – holds mandatory trapper education classes for first-time trappers; it is presently sponsoring voluntary courses for first-time wolf trappers. And throughout the 1980's and 1990's first-time wild turkey hunters attended special training courses.
- (G) Hounds must be confined to leads and/or leashes and controlled by hunters at all times while training or hunting wolves.

It has been demonstrated that the Natural Resources Board does indeed have the authority to impose reasonable restrictions on training on hounds, which are necessary to

prevent animal cruelty violations in contravention of the statute's track and trail directive, the Agency will be flying in the face of Dane County Circuit Court Judge Anderson's ruling.

Please recall, if you will, the following. It is something he takes very seriously.

We strive to protect and enhance our natural resources;

To provide a healthy, sustainable environment and a full range of outdoor opportunities.

To ensure the right of all people to use and enjoy these resources in their work and leisure.

To work with people to understand each other's views and to carry out the public will.

And in this partnership consider the future and generations to follow. Reflect on these words Natural Resources Board Members. It is the Mission Statement of the WI Department of Natural Resources. (Handout)

Mr. Kazmierski asked Mr. Thiel as to whether he has ever been in a hound hunt such as bear.

Mr. Thiel stated no but he has been around them.

Mr. Kazmierski clarified that he has never owned or trained them.

Mr. Thiel stated yes.

Mr. Kazmierski stated you were kind of the expert witness for the plaintiff's and he was curious that in his affidavit to the court that says you returned to provide expert consultation for plaintiff's attorneys Habush and Habush during the promulgation of the rules back in July. Were you on retainer at that time?

Mr. Thiel stated no, not then.

Mr. Kazmierski stated that in your sworn statement here it says that at that time you were.

Mr. Thiel stated that probably in July sometime when that first meeting happened. But that was a meeting. Incidentally, he is not making any money on it.

Mr. Kazmierski stated you seem to have a change of heart. Now you are willing to allow the use of dogs for hunting wolves?

Mr. Thiel stated no but I know where you are going.

Mr. Kazmierski stated he is just listening to the testimony that you just presented and it parted there from no dogs at all to hunt wolves.

Mr. Thiel stated that is correct and the reason why is that no one can ---?--- with the Natural Resources Board so he is trying to provide some responsibility.

Dr. Thomas questioned Mr. Thiel as to where the Board is headed, she is not sure herself.

Mr. Thiel stated that is good because everyone is confused. There is a statutory law and you are here today he presumes to figure out hunting and trailing with hounds. If you cannot eliminate that, then he is offering these suggestions.

Mr. Kazmierski stated you also mentioned in your affidavit and it keeps popping up that there is a human threat to allowing the use of dogs. Can you explain what the human threat is?

Mr. Thiel asked Mr. Kazmierski whether he had ever seen a canine fight.

Mr. Kazmierski stated no.

Mr. Thiel stated he knows wolves and he is not an expert or calls himself one. He does not believe in the word expertise. He has spent 40 years of his life working with wolves in the state of Wisconsin. He can tell you that when wolves fight, it is unbelievable. Fighting is different than preying. There are two different things. The mechanism is different. As with coyotes, the tools - the teeth are the same but the motivation is different. Fighting is something that is absolutely unbelievable to witness.

Mr. Kazmierski stated but that is the wolves fighting but he wants to know about the human risk because there is no incidence of humans being attacked by wolves in WI.

Mr. Thiel responded that there are two cases in North America where wolves killed people. It is not a far step from ones imagination that in trying to pull dogs apart from a pack of wolves that someone is going to get hurt. Do we really want to engage people in harms way? He is not saying that people are. The question is public safety. Do we really want to engage in putting people in harms way? We cannot predict the outcome. We can make an assumption that if you have two different canines fighting for possession of something, and in most cases of the wolf it is not food. When they kill something they eat it and there is a good reason for it. Pups are idiots and are hungry all the time. Once mom and dad kill they will leave it for the

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pups and they can strip it down really quick. It is not the pups to his knowledge killing dogs. It is the adult wolves. You are promoting these kinds of violent conflicts over territory. Wolves are just ferocious in terms of constant turf protecting. You are asking for trouble by putting these two species together.

Mr. Kazmierski stated that also in your affidavit you stated that the time from late December through March are when wolves are really aggressive.

Mr. Thiel stated for a different reason.

Mr. Kazmierski stated because it is breeding season. Statistically, there has only been one dog killed during that time period in the last two years. Most dogs are killed during the summer months. His question to Mr. Thiel was what data did you use to support that that was the timeframe because there are a lot of dogs out there at that time of year with coyote hunting, bobcat.

Mr. Thiel said from wolves on wolves. We know wolves are very aggressive during breeding season. Incidentally, canis lupis is related to canis familiar which is the dog. They do not care if there is a distinction or not. If you are putting dogs into the fray during the peak of breeding season, you are just asking for trouble.

Mr. Kazmierski stated we currently do that now with the coyote season and the bobcat.

Mr. Thiel stated your bear hunters and your coyote hunters explain, they are usually not chasing wolves. Not at that time. Now they will be chased.

Mr. Kazmierski stated the dogs are in the woods at that time, certainly, and we have not had a significant amount of dog depredation during that time period.

Mr. Thiel assumed that once you start chasing at that time, you will see it pick up.

Incidentally, he would hope the Natural Resources Board going forward, makes sure they keep statistics so that they can be evaluated because there are open gaps in this. To do otherwise is absolutely criminal to not collect data on this hunt.

Mr. Cole requested the two wardens approach the podium and state their names.

Chair Clausen then requested Tim Andryk approach the podium.

Pat Novesky, warden out of Three Lakes, stated he covers Forest County and Oneida County.

Andy Dryja, warden out of Langlade County, stated he handles multiple dogs, virtually his whole life. He is 36 years old. He has been in law enforcement full time with the DNR since 1999. He graduated from Stevens Point with a resource management degree. He has been around for a little while.

Mr. Cole asked Warden Dryja to talk to the group about circumstances that may present themselves with dogs on wolf and how a person who is knowledgeable about this practice would react to what they find in the woods knowing that there is a lot of things that could occur at the end of that hunt. He asked to hear the warden's opinion about dogs on wolves.

Warden Dryja stated he would try to think of a best way to present this. There is not that many circumstances that could present themselves. As it is with raccoon hunting, bobcat hunting, coyote hunting, bear hunting, animals are unpredictable. When you use your hounds, you know pretty much what is going to happen for the most part. He stated he would take a step back and talk about what happens. In Langlade County when there is snow, there is not a road that is not checked all winter long. There are hunters out there. They are going to find the track. They are going to let their dogs go. Typically, when he bobcat hunts, he only takes two or three dogs. If he takes too many, it is going to screw up the trail. What he wants to do is let one or two dogs go. He is going to let those dogs cold trail which means somewhere between the start of the hunt and the wolf. It is complicated, but they are going to cold trail this animal until they catch up to it close enough. When they do that it is called jump. They are going to jump that animal, they are going to get it out of its bed, they are going to get it moving around. What the hunters try to do, is in order to harvest that animal they are either going to add dogs to push it faster or in the direction they want and the other thing that is going to happen is the hunters are going to try to get around and cut those dogs off or the animal pursuing. Then it is shot. All right?

The way trailing hounds originally were bred is they bark. They are barking telling the



hunter what is going on. Today with technology, telemetry, and GPS collars you do not necessarily have to recognize all those barks because you can look at your handheld GPS and you can see everywhere the dogs went. It actually makes some average hunters some very good hunters now. It is true. A lot of guys used to pride themselves on what their dog sounded like. That is not as important anymore but it is still key because when you hear those dogs coming through the woods, that tells you the direction of the animal and where you need to be to harvest that animal. What is going to happen is the wolves are either going to run, they are going to stop and get bayed up. Depending on where the hunters are, as in a coyote hunt, they are going to cut that wolf off and get a shot at it and if they do not they are either going to pull dogs or add dogs depending on where it goes. If they stop, the hunter is going to try to get in there and shoot that wolf. If they do not, sometimes what will happen is if when you are walking in like a cat, a bear, or a coyote, they know you are coming and they get out of there. They run again. He does not really see where the complications would be coming from. There are not that many outcomes. He could tell you particularly he looked into situations of an actual wolf hunt. We have not had a legal wolf hunt in the state for a long time. What we have had is in Jefferson County and Rock County some individuals who were coyote hunting incidentally ran wolf and did not realize they ran wolf and shot and killed the animal. The wardens thoroughly investigated it. They seized the animal. They documented those cases and guess what? No one else got hurt.

Dr. Thomas stated to Warden Dryja that the Board is sort of in-between a rock and a hard place here. We have legal and popular forces on one side that say we do not have the authority or it is not necessary to do any restrictions on training and trailing with hounds. Then we have legal and popular forces at the other end of the spectrum that say you must do this or the hunting cannot go on or there will be additional challenges. The Board is somewhere there in the middle of this mess. Mr. Thiel presented a list of things that she is not going to ask you about all of them because some of them are not in your expertise, but a list of things that are suggested restrictions and with your warden hat on and your houndsman hat on, and feel free, either of you. One of the suggestions is that houndsmen should not be able to change out their hounds during the hunt. What do you think about that?

Warden Dryja stated that basically you have to understand what changing out means. If you use the word changing out. He thinks statutorily they use the word replace in the context of bear hunting. What that means is you can add fresh dogs to a chase up to six dogs bear hunting but you have to catch those other dogs off the chase before you can add. It is not where you can just continue and add in dogs. You have to physically catch those other dogs before you can put new dogs out.

Dr. Thomas questioned whether "replacing" is the common practice in bear hunting.

Warden Dryja stated yes. It is a very common practice in coyote hunting or bobcat hunting.

Dr. Thomas then asked for his comment on training being confined to daylight hours, from a warden standpoint.

Warden Dryja stated to him, it does not have any bearing on what an enforcer would do. You can train day or night on coyotes. You can train day or night on raccoons, you can train day or night on mountain lions right now. A lot of people do not understand that. People do.

Dr. Thomas then asked about hound hunters training or hunting should be required to wear to carry back tag identifications like back tags for deer hunting.

Warden Dryja stated he does not have a specific here but there was a time when the department went having back tags with bear hounds. That rule has since went away and it was always a constant complaint from the hunters to have to wear that back tag. It has went away. He did not really see any consequences either way. It has not hurt law enforcement.

Dr. Thomas then asked, on a couple thoughts she had, as for the potential of asking Houndsmen, in addition to their telemetry and locational collars, to have electric collars that are used for bird hunting on their dogs. It is one thing to locate but another thing to control.

Warden Dryja stated the in the context of hunting wolves?

Dr. Thomas stated yes.

Warden Dryja stated the only time he uses shock collars is when he has a young dog because he wants to straighten him out and make sure he is not going off game. He works with his

dogs quite a bit. He knows what they are doing. He puts bells on them in the winter so he can hear them in case they are not barking. He did not think it to be unreasonable to say you have to put a shock collar on a dog. He did not know.

Warden Novesky stated that he did not know what the intent would be of who would want to put a shock collar on a hunt like that if they are thinking the dogs get too close to their quarry that they can shock the dog and call them off. Dogs get wise to shock collars. Some of them are not that good. He does not see any value in something like that.

Dr. Thomas stated the Board is being asked by some forces to look at what are things that will ensure there is not animal cruelty and you know, it is hard for her to image that leashing your dog is an effective way to hunt wolves and she was looking to try to figure out other ways that could demonstrate the hunter was able to control their dogs. Somebody just told them that they tackle the dog in order to call it off.

Warden Novesky stated that dogs are dogs. Everybody has had a dog that is a good dog and comes to you when call and there are other dogs.

Mr. Bruins stated that very little has been said as to the value of using dogs as to how it pertains to the success of the hunt. This department worked hard to get the wolf delisted so that we could control the number of wolves in the state of Wisconsin. He thought they worked very carefully to come up with a harvest quota that was right but based on some of the things he has read as to how the wolf populations have been controlled in other states, if we would disallow the use of dogs in the hunt, what is your best estimate it is as to how successful we would be at reaching quota?

Warden Dryja stated he did not want to speculate. He did not know. But what he can tell you from experience with hunting coyotes which is a similar animal, they get very wise to calling very fast. They also get very wise to trapping very fast you get a missed opportunity in the harvest. He did not know why we would want to remove an additional harvest tool. It can be extremely selective and extremely efficient and he thought the selective part if very important. When you are calling wolves in and trying to trap them, you are not as selective. The houndsmen is the most selective hunter in the world.

Dr. Thomas another question for the wardens. One of the things that the Board has asked the department to do over this next year is to gather a lot of data so we can fill in the gap on things we do not know. You said there has never been a regulated wolf hunt in Wisconsin and clearly not a dog hunt. As hound hunter's form this first season when gathering up data, how would you feel about having a neutral third party accompany the hunter and hounds on a hound hunt to record observations of what happens, whether there are wolf-dog interactions, let's say there may be a cadre of retired wardens that would be willing to volunteer for that activity in the interest of gathering data so that we could go forward to the second season definitively say to people, we went out on ten wolf hunts and there was not a single interaction of a dog and a wolf. We could answer that question if we did that. How would you feel about that?

Warden Novesky stated what he thinks you are getting at is whether the dogs are going to latch on to the wolf. Is the wolf going to latch on the dogs and vice-versa? They already covered part of that when people bring these carcasses in to get registered because that is part of their job during the registration process is to look over that carcass and make sure that the story they get is actually what they see based on the evidence on the carcass. So if a pack of dogs grab the wolf and stretches it out and kills it, they will notice that during the registration process.

Dr. Thomas stated that if it comes in.

Warden Novesky stated yes, if it comes in.

Dr. Thomas stated you did not exactly answer her question about how he would feel about a neutral third party.

Warden Novesky stated he did not know. Every group is going to be a little different. There is going to be people that say sure, come along, and there are going to be other people that say

they do not want anybody along. As far as from a law enforcement standpoint, he did not know if they have an authority to order people to tag along on a wolf hunt.

Dr. Thomas stated we could if we make it part of the rule.

Warden Novesky stated he did not know who would be qualified. These hunts are drawn out. You are talking about a hunt that is drawn out over several miles in wolf country which is pretty rugged terrain. It is going to be hard to have somebody with them to witness everything that happens during the entire hunt and that comes back to what we talked about with the wolves being you know, hunting with dogs, is going to be a good tool. Absolutely it is going to be a good tool if done legally with six dogs and one shooter. It is going to be a challenge in wolf country to get that one person in front of that chase to shoot a wolf. There is not going to be any danger of decimating the wolf population doing this legally.

Warden Dryja stated he understands the process on having someone tag along. He can appreciate that. He is looking at the practical aspects of having a physical person. He usually hunts by himself. He does not want anyone slowing him down. Especially young kids and things like that, he would take anyone anytime and like Pat said, it all depends on the group, the availability, the schedule, the timing, and that would be a very nice volunteer situation or program. He did not know if this should be ordered.

Mr. Hilgenberg asked that based on your area experiences, both as hunters and enforcers, if you had to set this program up, how would you have it set up?

Warden Dryja stated that is a very good question. He will try to tackle it. If he was going to set up a program like this, and a lot of thought and a lot of information has gone into it, and Warden Tom Van Haren has gone through it. He is our law expert and he has looked at this stuff and tried to maybe compromise or set up a best case scenario. He likes the way the season is structured. Their training seasons have been questioned by law enforcement. Not just for wolf season because the guys do not know a whole lot about what we are talking about but the lack of framework on other animals leaves the door fairly wide open and if we do not establish a training season then it is basically a wide open training season without any restrictions. He does like how the wolf hunt is set up. The training, either we have to figure out we need additional rules on it or do we just allow it like bobcat season training where you can go out and train your dogs year round except for the leash law when in closure at certain times of the year. Same thing with raccoons, coyotes, and same thing with mountain lions. To establish anything further on the wolf training season, he did not think so.

Warden Novesky stated you are asking them to put on two different hats because he has six dogs in my yard that he wants to run as often as he can but at the same time he has to put his warden hat on. When he reads some of these things with training, there has always been loopholes in their dog training system. There are people that take advantage of those. For the most part, people are pretty good but like any, like it is trapping, deer hunting or whatever, they always have those people out there that are going to find loopholes and try to beat them. Guess that is what keeps them in business too, but when he reads some of the training laws he can see where some of those loopholes are going to pop up. He thought you need to regulate that somewhat. He did not have the magic answer for hunting with hounds.

Ms. Wiley stated she was going to ask the hard question, bear in mind you have your uniforms on. You are not here as private citizens, you made the choice to come here and wear your uniforms. Would you propose not hunting with dogs for the first year of the wolf hunting season so we can get a handle on the success rate of hunting and also have a chance to develop some reasonable hunting with dogs activities?

Warden Dryja stated we have reasonable activities now that are listed. He truly does. He is on a fine line here.

Ms. Wiley stated you are in a hard place because you are here wearing your uniforms so you have to speak the department line but you also have said you are both hunt with dogs.

Warden Dryja stated he is not sure what the department line is. He could do a dance here. He does not see the wolf season going forward as being a problem.

Ms. Wiley clarified with or without dogs. Either way.

Warden Dryja stated with trapping, with dogs, with calling, with all measures, legal hunters. Warden Novesky stated he would agree with Warden Dryja on that. There is a lot of hype building up to this because we have wolf season now which everybody has been talking about for a long time, we have dog season which is one of the first ones in the United States so there is a lot of hype here. After five years, a lot of this might be a non-event. There is a lot of people out there with the impression they are going to grab their five gallon pail and flip it upside down and sit in the woods and shoot a wolf. It is not that simple.

Mr. Cole asked whether Attorney Andryk was available for questions.

Chair Clausen stated he has some questions or two and has been waiting until the end.

Mr. Cole asked whether he had questions for these guys or for Tim.

Chair Clausen stated for these guys and Tim. Last night the Board received a correspondence memorandum from Secretary Stepp. It talked about the dog training and that type of thing. In one of the paragraphs in here it says "as the department..." and before he started this, he stated he has been a lifelong hunter. He had beagles growing up. He spent hundreds if not thousands of hours hunting rabbits. In his youth he did a lot of raccoon hunting with hounds. He thoroughly enjoyed being out in the woods in the night and sometimes coming back the next day to find his dog. He had killed a bobcat using hounds. He has harvested coyotes and fox not using hounds but basically sitting out and calling or trying to walk them up and catch them during the breeding season.

He is not unfamiliar with this type of thing and on another aspect, he has been a veterinarian in northern Wisconsin for 47 years and said he has sewed up at least his share of dogs that had very serious injuries from bear hunting and occasionally those injuries were fatal. So he had that perspective as a veterinarian. His impression here is, and this is going to get into an edgy area, but when the legislature authorized the use of dogs, they opened a Pandora's Box and brought aspects of things that we sometimes do under scrutiny that it may not have otherwise come in. As the department shared at previous NRB meetings, there is an animal cruelty law that would already apply to those intentionally causing their dogs to kill wolves. Are we authorized to enforce that law or is that a law because it is a 951 thing, is that something that would take a Sheriff or District Attorney to enforce?

Warden Dryja stated what he will explain there is not just a clear cut answer. Wardens have full police powers on state lands. On state lands wardens can enforce any and all laws in the state of Wisconsin. Wardens also have power granted to them called expanded authority. What expanded authority allows wardens to do is anywhere in the state, depending upon whether it is county land or federal land or private land, they see a crime in their presence they can deal with that. They have some protocol that they do, call the Sheriff's department and let them know what is going on, but to give them a badge and a gun and send them around and someone is robbing a Kwik Trip, and we have to stand there like this (twiddling thumbs), does not make any sense. Expanded authority is very important. Depending on the situation, they absolutely could investigate that. If the warden investigated under the statutory rule that says you cannot allow your dogs to kill any free ranging wild animals, we can be there for that. Wardens have to develop an intent of the situation. So if they would look at it, okay, what we thought was unintentional and moved to intentional, we investigated it anyway so why not just turn the file over to the District Attorney's office like we would do anyway.

Chair Clausen stated that this is where he was going. He was going to raise this under Board Members Matters but might just as well do it at this time. The next sentence says "the hunting rule the NRB adopted by emergency rule already makes it illegal to kill any game, including wolves with dogs, even if not intended." How often have you ever written a citation for that?

Warden Dryja stated never.

Chair Clausen said okay. Again, this is something that did not even occur to him. He has been well aware that in places like South Dakota and he knows people out there that do this who basically run down coyotes with their site hounds. That is common in several of the western states. It is not a particularly pretty thing when it happens. As this issue has come

about and he has talked with other people. He has talked with two retired wardens from the northern area, both of whom had supervisory experience and are highly respected he believes, and a retired land leader from up there. These guys are all telling him that it is not at all uncommon for when the snow gets a little bit deeper for the hounds to catch and kill coyotes. He realizes he is putting the wardens in a difficult spot here. Have you ever looked at a coyote carcass to determine whether or not it was torn apart or whether it was shot?

Warden Dryja stated no. Coyote carcasses do not get registered.

Chair Clausen stated right.

Warden Dryja stated there is not sight tag. The hunters do not tag them. It is an unlimited species with no requirement for the hunter to bring the animal to the department. They do not look at coyotes.

Chair Clausen asked whether the statements from these two wardens and the land leader are erroneous?

Warden Dryja stated what he would say is with coyotes and with bobcats, if the snow gets extremely deep, your dogs can run down and catch them. That does not mean that they will kill them or shred them apart. It depends on the handler and it depends on the dogs. It depends on where the handler is.

Chair Clausen stated he had only one other question, for Attorney Andryk. Like he said, he thought Pandora's Box has been opened here and we may not have heard the last of this. He is looking here and he is almost thinking back to the day he attended the court hearing. If he goes back here to the page that says "we feel the permanent rule process is adequate to put dog training restrictions on wolves in place. The Judge has determined ...." Anyway, it says "the department questions the necessity to engage in emergency rules on this topic at this time." If that is the case, why did you even bring it forward?

Attorney Andryk stated the Judge told the department to. The Judge basically said that under Act 169, the department has authority to promulgate emergency rules on wolves and told us to go back to the Board and consider it. The Judge said the department would be entitled to deference if the Board decides to make no additional changes or to make changes but the department needs to adequately...

Chair Clausen stated that basically, we have created a record here by fact that we discussed this and regardless of what we do on this, we have created that record.

Attorney Andryk stated yes.

Mr. Cole referenced the letter from State Representatives Suder and Moulton that was sent to the Board on the 24<sup>th</sup>, he asked Attorney Andryk whether they were right in their assertion.

Attorney Andryk stated that is going to be argued at their brief that we do not have authority to promulgate dog training rules in Act 169. The Judge disagreed with that. He felt that within the parameters of Act 169 it was necessary to promulgate rules on training and thus we have authority to promulgate rules for the wolf hunt on dog training on Act 169. So the authors of the Bill have weighed in and said that was not their intent and that the Judge is misinterpreting their intent and that Act.

Dr. Thomas asked whether the Judge's direction constitute an emergency.

Attorney Andryk stated it could.

Chair Clausen stated that like Dr. Thomas had stated earlier, we are between a rock and a hard place. We have a Judge and a public that feel this is a violation of the animal cruelty statutes. We have another group that feels that everything is just fine. His thought is that we are going to have a hard time coming up with any type of a rule that is going to be in any way acceptable to one group or the other. He ran this through his mind considerably and maybe even more than that. To him, it seems like if the legislature created something where there is some type of a conflict between the statutes, he thought it should be up to them to go back and revisit this thing and either alter the humane laws or alter the dog training laws.

Attorney Andryk stated he did not know if there was a real conflict between the human laws and the wolf legislation. Under the animal cruelty statute, as Warden Dryja pointed out, to

violate that you have to intentionally release a dog for the purpose of fighting with a wolf or killing a wolf. There has to be intent. That is a criminal statute. There is a prohibition on a dog killing a wolf and again you can check regulations but it is already against the law for the dogs to physically engage the wolves. Under Act 169, dogs are used for tracking and trailing and not for killing and taking the wolf. As long as hound hunters, from testimony from people here and our wardens, are following best management practices as they described, in their opinion there is not going to be a violation of animal cruelty law with Act 169.

Mr. Kazmierski stated that in the Judge's order, he really did not tell us that we had to amend the training rule or not. He just said we had to consider it. He asked whether the Board has met the standard of considering it to this point, do you think?

Attorney Andryk stated that the Board has had a lot of information on this. A lot of testimony.

Mr. Kazmierski thought they were there already.

Attorney Andryk stated they are close. Like he said, the Judge said that it is up to the Board to decide whether or not to impose additional restrictions or not impose any. He said that decision would be entitled to due deference from the court if there was actual consideration as evidenced by the record.

Mr. Kazmierski stated that the reason he is asking, is that some of the written comments we got, one was by Adrian Treves. He said "the scope statement proposing emergency rules for training hounds lacks sufficient time for rule development of science-based rules to avoid violations of animal cruelty laws", so on and so forth. Okay. So it sounds to him like both sides are saying, hey, we need to talk about this and he thinks going the permanent rule route and going through the Congress and maybe getting some of these groups together. He has heard some common ground here today which we did not hear a lot of last time. Let us look at that for the permanent rule. If that still satisfies the Judge's Order, he is just wondering if that is not a good way to good.

Attorney Andryk stated it could, in his opinion. He could not say which way the Judge would rule. He cannot predict it. He believes they are doing what the Judge told them to do.

Dr. Clausen asked Mr. Bruins to restate his motion.

Mr. Bruins restated his motion: He would like to move to remove from the recommendation to approve the scope statement the language that says "and also for emergency dog training rules under Act 169."

Dr. Clausen clarified that Mr. Hilgenberg seconded that.

Mr. Hilgenberg stated yes.

Dr. Clausen asked Attorney Andryk to explain to him now, what the difference is between removing this from the language and just defeating the emergency rule portion.

Attorney Andryk stated his understanding of the motion is that you are bifurcating that scope statement. You are pulling out the approval to make additional restrictions to the emergency order, not approving that, but still going forward with the scope statement with a follow-up permanent rule in the permanent rule process. In essence, you would not be proposing additional restrictions for this season but you would be looking down the road in the future with the permanent rule restrictions.

Ms. Wiley asked what the restrictions were on it.

Mr. Cole stated they would need to develop them.

Mr. Bruins stated that is to be developed in the permanent rule.

Ms. Wiley asked whether Mr. Bruins whether he was accepting the emergency rule as is.

Mr. Bruins stated he is proposing to remove the emergency language which would put them back to the recommendation, the way he understood it, of being supportive of working towards the permanent rule and going through due process.

Dr. Thomas stated she understands that you cannot predict what the Judge is going to do. Even if you could, there would be no reason to have two attorneys on every case. Going back to Mr. Kazmierski's question, have we actually considered this and decided that there is no point in going forward right now because there is not enough time to do an adequate job of going forward. That is one conclusion we might have come to. We could have come to the conclusion that no violation of the animal cruelty is happening under the current situation and that is a different reason for coming to the conclusion of not going forward for emergency rule. Does the Judge care which reason we use or is it only that we had a deliberation?

Attorney Andryk stated he thought the Judge would look at your decision on whether additional restrictions in use of dogs are needed right now and if they are not needed. In the future, the follow-up permanent rule would be appropriate. If you feel they are needed now but you do not go forward, that would probably not be very favorable by the Judge. If you decide they are not needed now, and based on the record before you, you managed consideration of that record, he thought the Judge would be more inclined to give deference to that decision.

Ms. Wiley stated she still does not understand it and asked whether the motion was to vote on the emergency rule.

Dr. Thomas stated the motion is to vote to take it out so there would be no emergency rule.

Mr. Bruins stated it would be removed from consideration.

Ms. Wiley stated that if there is no emergency rule, the Board is allowing the rule to go through as it is with the option of presumably changing it later, correct?

Chair Clausen asked if the Board did that, would that automatically approve WM-01-13 or is a separate vote needed to do that?

Dr. Thomas stated she did not think the Board had not gotten to that yet.

Chair Clausen stated he wanted to make sure the Board did not get to that point yet.

Attorney Andryk stated he thought it was a separate rule. You have to have a motion and a second first and then vote on the approval of that. If you approve the motion, then you would be pulling out the part of the scope statement dealing with the emergency rule so that you vote on that scope statement, you are just voting on permission to process for the follow-up permanent rule but not for initiating emergency rules.

Ms. Wiley stated to Chair Clausen that she was going to the quick on this and that it can be voted down if you like.

Chair Clausen stated there is one motion already.

Ms. Wiley stated she will suggest an amendment to it.

Chair Clausen said okay.

Ms. Wiley MOVED to amend the emergency rules that no dogs may be used for hunting wolves beginning November 26, 2012, and ending February 28, 2013, so the department has time to carefully access the humane and sensible dog training and dog hunting rules for implementation during the 2014 hunting season.

Mr. Hilgenberg stated this is contrary to the motion.

Ms. Wiley stated that is right. It is indeed. You are accepting the whole thing and I am making an amendment to a portion of it.

Mr. Hilgenberg stated it is contrary to the motion.

Dr. Clausen asked for clarification on Robert's Rules of Order from Attorney Andryk.

Attorney Andryk stated you would have to vote on Ms. Wiley's motion as a separate motion first and then get to Mr. Bruin's motion.

Ms. Wiley called the question.

Chair Clausen asked whether there was a second.

Mr. Bruins asked for clarification of Ms. Wiley's motion.

Ms. Wiley stated it would remove dog hunting from the current hunting season.

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Mr. Bruins asked which proposal goes first.

Ms. Wiley stated that the amendment goes first.

Chair Clausen stated that if we have a second, then Ms. Wiley's motion is on the floor.

**Ms. Wiley's motion failed due to the lack of a second.**

Mr. Bruins clarified that the Board is now back to discussing his motion, correct?

Chair Clausen stated correct.

Mr. Bruins stated that if the Board could take a step back here. The department worked hard to get the wolf delisted so that we could control the wolf numbers in the state of Wisconsin. Subsequent to that, the legislature acted and gave us a directive to establish a hunt including the use of dogs. In mid-summer, when did we meet, in July?

Mr. Cole stated July 17.

Mr. Bruins stated July 17, after reading hundreds of emails and listening to forty-some different people testify, we had a very good discussion and at that particular time, the Board voted to allow the hunt with parameters that were presented to them by the department. Subsequent to that, some animals rights groups had petitioned the courts to not allow the hunting of dogs. We have a judge's ruling but this whole thing is very fluid, it is not totally through the court process yet. So in his estimation, we are still under the directive of the legislature. That is why he made this motion. He is fully supportive of developing the permanent rule as to how dogs can be utilized in the hunt but to put something in emergency status with how fluid the situation is, he thinks it is foolish for them to go there.

Chair Clausen corrected Mr. Bruins that he should say animal humane organizations.

Mr. Bruins stated animal welfare groups, animal rights groups, however you want to phrase it.

Chair Clausen stated welfare and humane are preferable.

Chair Clausen asked for a roll call vote on Mr. Bruin's motion to remove the emergency dog training rule.

**The motion carried on a roll call vote of 6 - 1**

William Bruins – Yes

Preston Cole – Yes

Christine Thomas – Yes

Jane Wiley – No

Terry Hilgenberg – Yes

David Clausen – Yes

Greg Kaznierski – Yes

Chair Clausen stated the Board has made a record and it makes little difference what the Board does on this one way or another on this particular part of it.

Chair Clausen then stated that they are dealing with the main motion. Part of this is not controversial. Part of it is controversial. He would like to take this in two parts. One is the scope statement for WM-01-13 minus the rule proposal for the permanent rules for dog training and then the Board will vote on the dog training part. Otherwise, it will be confusing. He would hate to hold up the scope statement for the first part of it if there is controversy on the second. Unless someone has some serious objections about that, that is the way he would like to do this. Is there a motion to approve WM-01-13 scoping statement for the spring hearing rule proposals minus the restrictions on dog training.

**Ms. Wiley MOVED approval, seconded by Dr. Thomas, of the 2013 Wildlife Management Spring Hearing rule proposals. The motion carried unanimously.**

Chair Clausen stated the Board has latitude to either turn this down or not take any action on it. The Board can pass this as part of WM-01-13, or the Board can request that it be made part of Act 169 and be considered with the rest of the wolf hunting rules.

Dr. Thomas stated she does not understand the difference.

Chair Clausen stated that the difference is if the Board does this through the spring hearing it will



be through the spring hearing process and will be an essentially isolated or separated issue and may not be compatible if we get one result or one answer there and the Act 169 process in developing the permanent rules goes forward on another track. The Board could end up with something that is not compatible. That is the point he raised.

Dr. Thomas asked whether the spring hearing is just one more way to gather public information.

Mr. Bruins stated that if taken under advisement, yes.

Chair Clausen asked whether there is still a chance for other input on this thing. He supposed that before they adopt it, there is.

Attorney Andryk stated yes. There will be public comment on the permanent rule. Obviously we will have to come back to the Board with the request to go to hearing and then when that happens, the public comment period begins, we publish a notice, set up the hearings, and there would be quite a bit of opportunity for public comment.

Chair Clausen asked whether there was a motion to approve this as part of the permanent rule.

Mr. Kazmierski MOVED approval, seconded by Mr. Bruins of the restrictions on dogs in tracking and trailing wolves.

Dr. Thomas stated that what she would like to know is, however, if what is written here, is it broad enough so that this whole list of ideas that have been written out by various people will be considered. In other words, are we going to get to next year and the department is going to tell her, well you did not tell us specifically x, y, or z was in here so now we cannot consider that.

Attorney Andryk stated that Kurt Thiede has been dying to get into this conversation.

Mr. Thiede, Lands Administrator, asked to butt in to the conversation. He stated that part of the way that the Scope Statement has been written has been intentionally broad for wolves. Basically everything that was discussed today is still on the table for consideration that would go into those rules. The other thing that he would add is for his own clarification, going through the spring hearing process, if that is the decision that is made, typically the spring hearings in addition to the input that is received at those hearings, they also do collect information, and written comments.

We also provide that summary to the Board at adoption. He wanted to provide that.

Ms. Wiley stated that if they voted for this, we would be approving it for spring hearings.

Mr. Thiede stated he would need some clarification. Is this your motion, Dave?

Mr. Kazmierski stated he made the motion.

Mr. Thiede stated if you approve that then basically you are including it as part of the spring hearing rule process and then they would be coming back as communicated in December 2012 with the wolf proposal to take to the spring hearings in April 2013.

Chair Clausen asked for further questions, if not, he called the question.

The motion carried on a roll call vote of 6 - 1

William Bruins -- Yes

Preston Cole -- Yes

Christine Thomas -- Yes

Jane Wiley -- No

Terry Hilgenberg -- Yes

David Clausen -- Yes

Greg Kazmierski -- Yes

Dr. Thomas stated she would like to make a suggestion. Part of why she voted to take out the emergency rule but to still go forward promulgating the rule, was that she thinks they will learn a lot this year. We have had a lot of testimony that says there are going to make dog-wolf interactions and we have had a lot of testimony that states there is not going to be any dog-wolf interactions. She personally decided to come down on the "we do not have evidence" to tell us for sure there is going to be a problem this year. But, we could know some things next year that we do not know now. When she suggested her crazy idea of a third party going along with whomever has wolf tags who might be hunting with dogs as a voluntary program. She is making a suggestion to both the department and the hound hunters out there that if any of you have or know people that get wolf tags who want to do it this way, it would really help. If we are not worried

this is going to be a problem, it would really help if we had some folks who do not have a dog in the hunt who went along. Invite someone to go along and see what happens so that we actually have some documentation next year to fall back on. This is just a suggestion.

Mr. Hilgenberg asked whether it is appropriate for the Board to ask staff to do an automatic survey of all the hunters that are successful.

Mr. Thiede stated they are not done with the wolf topic today. They have an information item later today on the information they will be collecting. The intent is to follow-up with a questionnaire from successful wolf hunters. In addition to the data that we will be collecting upon registration and though phone-in, there will be opportunity to collect information.

Ms. Wiley asked to follow-up on Dr. Thomas' suggestion, and suggest that she would hope that the hunters would not preselect based on age, sex, sexual orientation if you will, or anything else in terms of who they invite to go hunting. She believes she could stand up and run with anybody.

Dr. Thomas stated this sounds like a volunteer.

Ms. Wiley stated, yes, she is volunteering.

8.B. Land Management, Recreation, Fisheries, and Wildlife

8.B.1 Wisconsin wolf management plan timeline for revisions and discussion

Kurt Thiede, Land Administrator, stated he had provided the Board with two memos yesterday and a draft timeline for the Board's review. In their opinion, it allows public input, important social dimensions work, data collections, and information gathering. It also tracks closely with their proposed permanent wolf rule hunting timeline. Nothing is guaranteed but it is their intent that they have a plan approval that would coincide closely with the permanent rule adoption which would occur based on their estimation prior to the 2014 season. The idea is to have two seasons of data collection prior to establishing permanent rules. The timeline would closely track that. The timeline they discussed and provided, he believes, will provide the Board a review that is focused on using at least two seasons, harvest data, experience, human dimension, and research. Stakeholder involvement is the basis for the publicly accepted plan. They will strive to seek the same balance that was struck in the original 1999 wolf management plan.  
(Handout)

Dr. Clausen asked whether there is anything in there that precludes a discussion of what role the wolf will play within our ecosystem.

Mr. Thiede stated from his perspective they will take a holistic look. They plan to open up the plan for discussion. They have not set up any sideboards on it. From their opinion, with the two year timeframe, they may get some push back from staff on whether or not they would be able to meet that timeline. It is important on what was heard from Mr. Cole and other Board members to take a look at the plan.

INFORMATIONAL ITEM – NO ACTION WAS TAKEN

8.B.2 Wolf harvest season information gathering

Kurt Thiede, Land Administrator, referenced the memo that was distributed yesterday. He reviewed the highlights in the types of data and information that will be collected on the wolf hunt. Attached to that memo is a list prepared by staff, wildlife management, science services, and customer service. In general, the department will continue to conduct wolf track counts and also have begun assessing and developing a white paper on potential alternative wolf population techniques. He hoped to have that completed within the next month, but nothing that the department may be able to put in place immediately. The idea would be to perhaps even pilot as soon as next spring as alternative techniques to try to take into account cost effectiveness but then also information and data collection that would satisfy the five year federal delisting requirements of monitoring the wolf population. Some highlights on how the department plans on going about collecting that data are as follows: wolf harvest call-in, reporting, and registration by successful hunters and trappers; survey of warden and wildlife manager observations; carcass evaluations; use of weapon/method used; GPS locations-latitude and longitude; wildlife health monitoring review of diseases; USF&WS trapping and removal effort reports; records of wolves dispatched

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by landowners with or without permits; wolf track surveys; radio telemetry work, and alternative population estimation. They will be happy to keep the Board up to speed on those discussions as more information is gathered. (Handout)

**INFORMATIONAL ITEM – NO ACTION WAS TAKEN**

Chair Clausen requested a motion to adjourn the meeting.

Dr. Thomas **MOVED** approval, seconded by Mr. Hilgenberg to adjourn the meeting. The motion carried 5 – 0, Mr. Cole and Mr. Bruins had departed previously.

\*\*\*The meeting adjourned at 3:00 p.m.\*\*\*

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The following resources are also available: Agenda Item Packets (green sheets), supporting documents, and public comment.

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WISCONSIN FEDERATED  
HUMANE SOCIETIES, et al.,

**COPY**

Plaintiffs,

-vs-

Case No. 12CV3188

CATHY STEPP, SECRETARY,  
WISCONSIN DEPARTMENT OF  
NATURAL RESOURCES, et al.,

Defendants,

and

**Excerpt of Court's  
Ruling**

WISCONSIN BEAR HUNTERS  
ASSOCIATION, et al.,

Defendants-Intervenors.

=====

DATE: January 4, 2013

TIME: 1:30 p.m.

BEFORE: HONORABLE PETER C. ANDERSON  
Circuit Court Judge

PROCEEDINGS: Oral Ruling

REPORTED BY: Theresa L. Groves, RPR  
Official Court Reporter

APPEARANCES: ROBERT L. HABUSH, Attorney at Law,  
Milwaukee, Wisconsin, appeared  
telephonically on behalf of the  
Plaintiffs.

JODI HABUSH SINYKIN, Attorney at Law,  
Milwaukee, Wisconsin, appeared on behalf  
of the Plaintiffs.

1 APPEARANCES: CARL SINDERBRAND, Attorney at Law,  
2 Madison, Wisconsin, appeared on behalf of  
the Plaintiffs.

3 THOMAS DAWSON, Assistant Attorney General,  
4 appeared on behalf of the Defendants.

5 THOMAS JANCZEWSKI, Attorney at Law,  
6 Milwaukee, Wisconsin, appeared on behalf  
7 of United Sportsmen of Wisconsin,  
8 Wisconsin Bear Hunters Association, Safari  
9 Club International, and US Sportsmen's  
10 Alliance Foundation,  
11 Defendants-Intervenors.

12 JAMES H. LISTER, Attorney at Law,  
13 Washington, D.C., appeared on behalf of  
14 United Sportsmen of Wisconsin, Wisconsin  
15 Bear Hunters Association, and US  
16 Sportsmen's Alliance Foundation,  
17 Defendants-Intervenors.

18 ANNA M. SIEDMAN, Attorney at Law,  
19 Washington, D.C., appeared on behalf of  
20 Safari Club International,  
21 Defendant-Intervenor.

22  
23  
24  
25

1                   THE COURT: As in any case, it is an honor  
2 to decide this case. I wouldn't say it's more than  
3 an honor, but it's always an honor to a judge to be  
4 asked to pass on any case of importance, whether it  
5 be a small claims case, divorce, juvenile  
6 delinquency or this case. I do appreciate  
7 everybody's work on this case. It was done on  
8 pretty tight time constraints, I know it was  
9 difficult, some of it was done over the holidays,  
10 and I know it wasn't even that convenient to come in  
11 here today, and I think Mr. Andryk might have had to  
12 change his schedule for this, and I appreciate that.  
13 I appreciate all of you coming.

14                   As in every case and in this case, as in the  
15 past, what I'm going to attempt to do is impartially  
16 discern what the law is and apply it to the record  
17 that we have. I'll just call it as I see it. And I  
18 won't mince too many words, maybe a little bit, but  
19 that's one of the, I would say, most important and  
20 satisfying aspects of this job is to just call it as  
21 you see it.

22                   I also feel that the best rulings of law by a  
23 court are not particularly nuanced or shouldn't be  
24 too nuanced unless you actually have to be. I  
25 think, while certainly statutes can be

1       extraordinarily complex and facts can certainly be  
2       complex and also nuanced, legal rulings I think are  
3       best, which are most, that are the simplest. I  
4       guess it's sort of what we call Occam's razor of  
5       legal rulings.

6           I have a few threshold matters I want to mention.  
7       Because I'm going to be issuing a final judgment  
8       today, I'm not going to be taking up whether or not  
9       the temporary injunction should be vacated. I would  
10      point out that I really did not receive much in the  
11      way of competent, admissible evidence as part of the  
12      intervenors' -- I guess the State's motion as to the  
13      plaintiffs' showing in this Court as to the risk to  
14      dogs, wolves and people of having dogs hunt wolves  
15      or trained to hunt wolves without restrictions. The  
16      Board may have received evidence of that, but this  
17      Court didn't, and the Court can't rely on those  
18      statements before the Board as establishing those as  
19      a matter of fact. Those would be hearsay.

20           And really I didn't find the intervenors ever  
21      attempting to present much in the way of harm were  
22      the injunction to continue, other than their  
23      clients, a couple people I believe, wouldn't be able  
24      to hunt wolves. Of course, the season is now over  
25      so that harm isn't there, and I didn't see anything

1 regarding training, but that's really just a minor  
2 matter.

3 On the issue of standing, given the stipulation  
4 of the parties today, I will just reaffirm my prior  
5 ruling, based on the reasons stated at the hearing  
6 that we had on the Motion to Dismiss for standing,  
7 that the plaintiffs do have standing. When I pause  
8 like that, it means some thought flittered into my  
9 mind that I forgot to hang on to. So maybe it will  
10 come back.

11 Let me see if I can address this issue of whether  
12 -- I did want to say this as well on the objection  
13 to the plaintiffs' claim under 227.10 and 11: It  
14 was asserted by the intervenors that this Court  
15 didn't address that issue, but, in fact, you may  
16 recall -- first of all, we did not expressly address  
17 it in the Motion to Dismiss hearing. I intended to.  
18 I think I just got taken up in the specific argument  
19 that was presented there, which, as I viewed it, was  
20 an argument inconsistent with the defendants'  
21 original position at the earlier proceeding that  
22 said they have no authority. But then Mr. Dawson  
23 was saying "But we exercise discretion. We have no  
24 authority, but we exercise discretion not to adopt a  
25 rule." That's just my brief summary of what I heard



1 at the Motion to Dismiss argument, and I did intend  
2 to take up the issue of 227.10 and 11.

3 What I did do, though, when we took up the Motion  
4 to Intervene, is I did briefly address the issue on  
5 the record. But I'm going to address it again today  
6 because we've talked about it, and let me start with  
7 227.11(2)(a)(3). This says that "Rulemaking  
8 authority is expressly conferred as follows: Each  
9 agency may promulgate rules interpreting the  
10 provisions of any statute enforced or administered  
11 by the agency, if the agency considers it's  
12 necessary to effectuate the purpose of the statute,  
13 but a rule is not valid if a rule exceeds the bounds  
14 of correct interpretation."

15 Then sub (3) of (2)(a) is a further restriction  
16 against the general grant of authority. "A  
17 statutory provision containing a specific standard,  
18 requirement or threshold does not confer on the  
19 agency the authority to promulgate, enforce or  
20 administrate a rule that contains a standard  
21 requirement or threshold that is more restrictive  
22 than the standard requirement or threshold contained  
23 in the statutory provision."

24 Well, that doesn't say you can't adopt more  
25 restrictive standards, requirements or thresholds.

1 It says that the actual establishment of a specific  
2 standard, requirement or threshold itself does not  
3 confer that authority. I think the plaintiffs are  
4 right. It doesn't make sense to say all you can do  
5 is adopt what's already been enacted. Moreover, in  
6 our case -- well, I'll get to that in a moment.

7 227.10(2m): "No agency may implement or enforce  
8 any standard, requirement or threshold, including as  
9 a term or condition of any license issued by the  
10 agency, unless the standard, requirement or  
11 threshold is explicitly required or explicitly  
12 permitted by statute or by rule that has been  
13 promulgated in accordance with this subchapter."

14 So, obviously, there wasn't a rule adopted in  
15 accordance with this subchapter, but what the  
16 plaintiffs are saying is that there should have been  
17 one. They're saying they have the authority to do  
18 it. And I read Act 169, Section 21, both subsection  
19 (a) and (b), as specifically authorizing the  
20 Department to promulgate any rules necessary to  
21 implement or interpret the Act, and that included  
22 what it meant to track or trail a wolf. It also  
23 meant whether you could beat a wolf to death when  
24 you trapped him in a trap, and it also meant whether  
25 you could do it at nighttime, and it also meant --

1 well, I think the statute already has seasonal  
2 restrictions. So, to me, I didn't see any violation  
3 of these statutes, either 227.10(2m) or  
4 227.11(2)(a)(3).

5 Now, there has been discussion about the standard  
6 of review. I think, for those who are sitting in  
7 the gallery today, it was mercifully left to the  
8 briefs. I'll quickly review that here. There's the  
9 I want to call it the crane decision, *Citizens*  
10 *Concerned for Cranes and Doves*, 270 Wis. 2d 318,  
11 decided by the Wisconsin Supreme Court back in 2004.  
12 And it does say that, on issues of whether an  
13 agency's exceeded its statutory authority in  
14 rulemaking, neither party has the burden.

15 The thing that's been cited to me in *Liberty*  
16 *Homes* was *Liberty Homes'* constitutional standard,  
17 and that was not the standard I employed earlier.  
18 What I invoked *Liberty Homes* for back when we met in  
19 August was the authority of this Court to develop a  
20 fuller record to figure out exactly what was going  
21 on in the Board if I couldn't figure it out from  
22 reading the administrative record. I did not invoke  
23 *Liberty Homes* to say that is the correct legal  
24 standard. That was a constitutional standard as to  
25 rulemaking. It didn't say this is the standard for

1 the claim that a statute exceeds statutory  
2 authority.

3 Now, the one place, and you'll see this in a  
4 minute, where it pretty much I think deepened my  
5 understanding on the administrative law here stems  
6 from this *Preston* case. This was *Preston versus*  
7 *Meriter Hospital, Inc.*, and the latest iteration of  
8 this is 307 Wis. 2d 704 which was decided by the  
9 Court of Appeals I believe in 2009.

10 You may recall, that cited a federal standard for  
11 rulemaking which said "A regulation may be arbitrary  
12 or capricious if the agency has relied on factors  
13 which Congress had not intended to consider; 2,  
14 entirely failed to consider an important aspect of  
15 the problems; 3, offered an explanation for its  
16 decision that was counter to the evidence before the  
17 agency; or, 4, is so implausible that it could not  
18 be ascribed to a difference in view or the product  
19 of agency expertise. However," it says, "if the  
20 agency can satisfactorily explain its regulatory  
21 decision if there is" -- quote -- "a rational  
22 connection between the facts found and the choice  
23 made" -- unquote -- "we are to defer to the agency."

24 So as I said before, I viewed it as a deferential  
25 but by no means nonexistent standard of review.

1       It's certainly more exacting than the general  
2       constitutional standard that *Liberty Homes*  
3       established. And while that was a federal standard,  
4       the federal law on administrative law is more  
5       deferential to the agency or no less deferential  
6       than the state.

7             And, moreover, any time an agency acts  
8       arbitrarily and capriciously, it is necessarily  
9       exceeding its statutory authority, so I don't think  
10      there's anything inappropriate in using that  
11      standard from *Preston*. It's just a question of how  
12      it applies here. And as I'm going to note in a  
13      little bit here, I do have a different view of that  
14      than I had earlier in this case. But it makes sense  
15      that that's what we'd look at to determine whether  
16      an agency has exceeded its statutory authority as a  
17      general matter.

18            There are two essential claims in this case.  
19      Now, as I said at the outset, there were these loose  
20      ends that needed to be tied up, but having tied them  
21      up, I saw the essential issues in this case, and  
22      it's no surprise to anybody, was the authorization  
23      of the use of dogs to hunt wolves without further  
24      restrictions beyond those that were established.  
25      That was one. Of course, there are some

1 restrictions. And, two, the authorization of  
2 training dogs to hunt wolves in the wild without any  
3 restrictions because there are -- maybe Mr. Dawson  
4 identified one. You couldn't kill the wolf. Aside  
5 from that, no restrictions have been adopted  
6 regarding the training of dogs to hunt wolves.

7 Those are two different claims, as this Court  
8 sees it, but it's not merely the fact that the one  
9 has some restrictions and the other has none or  
10 almost none. What I saw as the major difference  
11 between those two claims, and this is not nuanced,  
12 is one was objecting on the basis of the absence of  
13 a rule; that is, that there was absence of further  
14 restriction on hunting wolves.

15 The other, though, I saw -- well, the plaintiffs  
16 may not have seen it this way and the defendants  
17 certainly didn't see it this way. I saw it as there  
18 being a rule that appeared to authorize the training  
19 of dogs to hunt wolves, specifically NR 17.04(1), so  
20 there was an affirmative.

21 In the one case, there was the absence of agency  
22 action, which I saw the plaintiffs as challenging;  
23 in the other case, there was definitely an  
24 affirmative agency action; namely, the adoption of  
25 NR 17.04(1) or its continued validity once wolves

1 became subject to hunt. So, for me, that was a big  
2 difference. And, again, I don't think that is a  
3 nuanced difference between the absence of a rule and  
4 the existence of a rule.

5 Now, the plaintiffs have tried to argue otherwise  
6 that essentially they're challenging the rule as  
7 adopted because it allows for these terrible, and I  
8 believe they would be terrible, wolf-dog  
9 interactions. But there's actually nothing in the  
10 -- aside from 10.02(1)(a), which has to do with  
11 training, there is nothing in these hunting rules  
12 that are claimed to be invalid, other than that they  
13 don't go far enough.

14 The restrictions on nighttime, the no clubbing or  
15 rather it's the shooting-to-death requirement in the  
16 case of trapped animals and maybe one other that I'm  
17 forgetting, nobody's saying those are improper. No  
18 one is saying that the six dogs is an improper  
19 limit, and, of course, that's in the statute, but  
20 rather the plaintiffs are saying that these rules  
21 didn't go far enough. I'm going to come back to  
22 that issue. I'm going to first address the training  
23 issue.

24 As I indicated when we talked at the outset,  
25 806.01 I believe says to the Court to grant relief

1 to which a party is entitled regardless of what's  
2 requested in their complaint. You recall I did  
3 identify 17.04(1) in the temporary injunction. That  
4 made it much easier for me at that time because it  
5 was a specific rule that I could enjoy.

6 If the defendants are correct, there was no  
7 authority in 169 to adopt a training rule as part of  
8 this emergency rulemaking, and, in fact, they didn't  
9 adopt a rule. The Board did not adopt a rule. This  
10 seems to be somewhat consistent with the  
11 drafting-record argument that was presented;  
12 although, I'm not going down that route. It's too  
13 unclear what it means when a drafting request isn't  
14 found in a statute.

15 But from my point of view, turn this back to  
16 17.04(1), which was an affirmative act of the  
17 Department, and from my point of view, two things  
18 followed: Well, one, even if they didn't have  
19 authority under 169, they certainly would have  
20 authority just generally, including emergency  
21 rulemaking, to address whether that rule could  
22 remain in effect without modification as it applied  
23 to wolves. And don't forget: This rule, 17.04, it  
24 places limits on training dogs to hunt rabbits and  
25 says you can only use two.



1           What I'm hearing today is, well, actually, under  
2 this law, you can have 2,000 dogs chasing wolves  
3 throughout the north woods in the middle of summer  
4 when it's most dangerous in the middle of the night.  
5 I believe, given the legal situation that existed at  
6 the time of these rules' adoption and consideration  
7 last summer, pursuant to Subsection 21, it would  
8 certainly be within the Board's authority to  
9 actually put some restrictions on the training of  
10 dogs to hunt wolves as necessary to implement the  
11 wolf-hunting statute, which is what it says.

12           Now, it's true the statute did not specifically  
13 address training, but as I ruled before, training is  
14 part and parcel of hunting, of tracking and  
15 trailing. And in any event, even if that's wrong,  
16 the Board still would have had authority and really  
17 an obligation to not allow 17.04(1) to be enforced  
18 without further consideration of whether this was an  
19 appropriate definition of what training of dogs to  
20 hunt wolves consists of.

21           Now, the plaintiffs may be correct, and this is  
22 an issue of law, that, under 10.01(1)(a), the  
23 delisting as to a state-protected species was not  
24 required to authorize hunting. The State believes  
25 otherwise. And the plaintiffs may be correct if

1 that's true that that was the offending act.

2 But I'm saying I believe that when a rule has  
3 been adopted by an agency that, due to intervening  
4 changes in the law, results in a very serious risk  
5 arising and it's not dealt with by that agency and  
6 the agency has authority, in my view, as well under  
7 an authorizing statute to take it up but, even  
8 without that, under its general emergency and  
9 rulemaking authority has the authority to take it  
10 up, it is not sufficient for the agency to disregard  
11 all the evidence on this issue or, more  
12 specifically, to do nothing.

13 And if we want to say, in the past tense, the  
14 rule is invalid, then we say, in the past tense, the  
15 rule did not consider the impact of the rule on the  
16 safety of dogs or the hunted species or humans in  
17 the event there was any delisting of animals. But I  
18 think it's more appropriate to say that the  
19 requirement or, rather, the invalidity of this rule  
20 came into being at the time the hunting of wolves  
21 became permitted and that the failure to take this  
22 up would have resulted in the Board exceeding its  
23 statutory authority.

24 I do not believe I can agree with the State's  
25 view that, following my decision last summer, the

1 Board took this matter up in a good-faith way. They  
2 heard a lot of evidence. They heard a lot of people  
3 talking. Most of it had to do actually with hunting  
4 wolves, some of it had to do with training dogs to  
5 hunt wolves, but nowhere do I recall in that record  
6 anybody saying, "Oh, yeah, it's a good idea not to  
7 put any restrictions on year-round," or anybody that  
8 said, "yeah, we don't need any limit on the number  
9 of dogs. 2,000 is fine." Pardon me?

10 MR. ANDRYK: That was in the record.

11 THE COURT: Okay. Who said that?

12 MR. ANDRYK: The people that testified in  
13 front of the Board felt that no additional  
14 restrictions were needed because hound hunters would  
15 be careful about releasing their animals at times  
16 when they would be putting them at risk.

17 THE COURT: Except for possibly that, and  
18 that's it. The Board, as I read this record, it  
19 appeared as though the agency was proposing an  
20 emergency rule that would have been very similar to  
21 the final rule that's been proposed, which would  
22 have said six dogs, no nighttime, and do it when  
23 snow is on the ground. That's what I read the  
24 agency as recommending.

25 But what happens when they actually get to the

1 Board talking about it -- let's just go back to the  
2 agency here for a minute. On the bottom of page  
3 294: "More proactively perhaps, the legislation  
4 addressed this issue" -- prohibition in core wolf  
5 habitat -- "dog hunting will be allowed by statute  
6 only from the day after the regular gun-deer season  
7 to the end of February when wolves are not using or  
8 defending dens or rendezvous sites. While we cannot  
9 assume this graph to completely reflect the risk of  
10 future interactions, it does suggest that the higher  
11 period of depredations on dogs occurs in July,  
12 August and September. This may be due to more dogs  
13 in the woods or a variety of other factors, but the  
14 fact that wolves aggressively defend rendezvous  
15 sites and denning sites during these months can't be  
16 ignored." Wolf depredation on dogs are rare with  
17 only one depredation in Wisconsin occurring during  
18 the winter months. That was a little bit of a  
19 rephrasing.

20 Anyway, I just thought, aside from somebody  
21 possibly saying hunters are smart enough not to do  
22 this, we had nobody saying, nobody said that I  
23 recall, year-round training of dogs is a good idea;  
24 nobody I recall said no limits on the number of dogs  
25 was a good idea. I don't remember anybody saying

1 day and night restrictions are not appropriate.  
2 Maybe people said these can be done without the  
3 government telling them, maybe somebody said that,  
4 but nobody said these restrictions, in and of  
5 themselves, are good ideas that I recall.

6 But on top of that, what the Board then did with  
7 this information -- well, the problem is, I think a  
8 lot of problems stems with the fact that they put  
9 too much weight on a letter they got from a  
10 legislator. Mr. Andryk I think assisted them in  
11 this regard because we have the transcript of it.  
12 Let's see.

13 "Chairman Clausen: Okay. I'm done. Preston,  
14 did you have anything else? Mr. Cole: Yeah.  
15 The letter from State Representative Suder and  
16 Moulton, Representative Suder and Moulton that  
17 was sent on the 24th, are they right in their  
18 assertion? Mr. Andryk: That's what we argued in  
19 our briefs; that we don't have authority to  
20 promulgate dog-training rules under Act 169. The  
21 Judge disagreed with that. He felt that was  
22 within the parameters of Act 169 and was  
23 necessary to promulgate rules on training, and,  
24 thus, we had authority to promulgate emergency  
25 rules on dog training under Act 169."

1           So the authors of the bill have weighed in and  
2           said that was not their intent and that the Judge is  
3           misinterpreting their intent in that Act. Now, your  
4           counsel told me what those legislators said had no  
5           bearing on what the Act meant. So I don't know why  
6           you guys don't talk. But it would be my view as  
7           well that normally what legislators say  
8           post-enactment does not determine what a statute  
9           means. If they want to do that, they could do it  
10          the legal way, which is to put in a corrective piece  
11          of legislation, and maybe they will; maybe they will  
12          on Monday. But at this point in time, what we had  
13          was the express language of the statute.

14          Moreover, when you say to me, Judge, we're going  
15          to do what you told us to do but you were wrong and  
16          you're telling the Board the Judge is wrong, you're  
17          not really doing what the Judge is telling you to  
18          do. I wasn't telling you to do it. I was saying  
19          you can do it. I said you have the authority to do  
20          it.

21          But the view that the Department took and the  
22          Board followed was they didn't really have the  
23          authority to do it, and it's because, a big part,  
24          the legislator said, "No, we don't have the  
25          authority. It doesn't matter what the Judge says."

1 That's fine. That's the route you wanted to take,  
2 you're entitled to that view. You can have the  
3 Court of Appeals or the legislature confirm it, but  
4 in this Court, I had just ruled you did have the  
5 authority to do it. And so you can't say "We're  
6 doing what the Judge asked us to do, but we don't  
7 have the authority to do what the Judge asked us to  
8 do."

9 Actually, the general record in this case, and if  
10 I hadn't represented state agencies in my career,  
11 maybe I'd rankle at it, but there's parts of this  
12 record that don't make sense to me. We've got, in  
13 the summer, people -- I'm told by the State at our  
14 hearings in August, at the end of August, and this  
15 is both Mr. Dawson and Ms. Hirsch, that the reason  
16 no restrictions were placed on hunting dogs or  
17 training dogs was that the Board concluded they  
18 didn't have the authority.

19 You really have to scratch that record to find  
20 where they think about that or express it or where  
21 it's even conveyed to them, except for this part  
22 where Mr. Andryk is talking. There's some mention  
23 where their hands are tied, but I think most people  
24 would read that record as saying somebody told them  
25 your hands are tied. They didn't put it in the

1 record where that was told.

2 Like I say, I call it the way I see it. I'm not  
3 saying that's exactly what happened, but I sure  
4 don't see in this record where anybody thought  
5 through what is the meaning of this statute, like I  
6 did. I went through, I got the book out, and I read  
7 it to you, and I used the words, but I didn't see  
8 anybody ever doing that in the record that I have.  
9 In fact, that includes these representatives who  
10 just give us this fiat explanation of what the law  
11 says or authorizes or doesn't authorize.

12 Again, it's a free country, and there's no reason  
13 why legislators can't chime in on what they view the  
14 law is, but it doesn't have a heck of a lot of  
15 weight legally. It certainly risks violating a  
16 separation of powers if you have a pending lawsuit  
17 and the Judge is saying otherwise.

18 But in the last analysis, it is for the Court,  
19 not individual legislators, to decide what statutes  
20 mean as well as nonstatutory provisions. That's our  
21 job. They make the law; we interpret it. They can  
22 change it if they think we're doing it wrong. And  
23 by "the courts," I don't mean just me; I mean the  
24 Court of Appeals and I mean the Supreme Court, it's  
25 all of us have that right and authority because our



1 job is to determine what the law is, not to make the  
2 law. It's not the job of the legislators to tell us  
3 what the law is; it's certainly not in a pending  
4 legal action or at least not in a way whose reliance  
5 is going to get you anything. It doesn't get you  
6 anything.

7 Again, I'm not saying you couldn't do it. You  
8 did. It wasn't a contempt of this Court. You  
9 didn't have to do anything, but you're trying to  
10 sell to me as something a lot more than actually  
11 happened. And that's also not only evident that  
12 counsel is telling them that, but then the actual  
13 discussion of why they're doing what they're doing.

14 We have Mr. Bruins on page 15 of this transcript  
15 that Mr. Sinderbrand was kind enough to supply. He  
16 says, "We have a judge's ruling, but this whole  
17 thing isn't -- it's very fluid. It isn't totally  
18 through the court process yet. So my estimation,  
19 we're still under the directive of the legislature,  
20 and that's why I made this motion."

21 Yeah. They viewed it as, in the summer, their  
22 hands were tied. This time, though, I think they  
23 had a little more explicit reason for -- it's more  
24 explicit why they got to that conclusion. Again,  
25 last summer, they certainly did nothing on training.

1 In September, they took it up but only to take no  
2 action. They certainly did not authorize the  
3 training of dogs to hunt wolves. Their indication  
4 of legislative intent was to not do anything at all.

5 And there was no evidence supporting the  
6 continued existence of 17.04(1) without any  
7 restrictions, at least as to number of dogs, time of  
8 day, time of year and possibly other things, with  
9 the possible exception of this argument that they  
10 appeared not to rely on that hunters can figure this  
11 out for themselves.

12 By the same token, if hunters are going to limit  
13 to six dogs, daylight and when snow is on the  
14 ground, I don't know why they're objecting to a  
15 regulation. It's kind of like the prohibition of  
16 text messaging. I would never text while driving.  
17 I would never text message while driving, but we  
18 want those rules in place for the guy that doesn't  
19 know that, and that's kind of the same as this.

20 There certainly was evidence before them.  
21 There's really no contrary evidence that there was  
22 some safe way to undertake the training of dogs  
23 without restrictions absent real good luck that  
24 everybody that did it was going to be smart.

25 So I do find NR 17.04(1) -- or I'm declaring

1 17.04(1) to be invalid to the extent it authorizes  
2 the training of dogs to hunt wolves without further  
3 restriction.

4 One more thing on legislators trying to help out.  
5 And, again, it's their right. They can do it. That  
6 letter had no analysis. It was just ipse dixit. We  
7 say it's so, and that's how it is. Again, this  
8 Court tries to articulate its analyses, but if the  
9 author of legislation intends a statute to mean  
10 something, the best way to do that is to put it in  
11 plain English when they write the statute.

12 Mr. Lister suggested they could have put in this  
13 statute that you're authorized to establish rules  
14 regarding training. They could have said that.  
15 They also could have put in this does not permit any  
16 rules regarding training. What they did, in fact,  
17 put in was that you have the authority to adopt any  
18 rules that are necessary to implement or interpret  
19 the statute.

20 And not only does the language itself indicate a  
21 broad grant of authority, Mr. Suder's comments  
22 during the summer indicated that they wanted to  
23 grant the DNR flexibility, and it makes perfect  
24 sense that you would be granting to the agency  
25 flexibility to come up with rules that would address

1 these issues that had never been addressed in this  
2 -- never been at issue in this state, or at least  
3 not in anybody's lifetime, because this would be the  
4 first time not only that the State was going to be  
5 allowing the hunting of wolves, but it would be the  
6 first state in the Union to authorize the use of  
7 dogs to hunt wolves. So it certainly would make  
8 sense that the legislature would turn to the agency  
9 and say give us what's needed that we haven't put in  
10 our statute. But I think it mostly follows just  
11 from the express language of that statute.

12 So I view that what happened here then was, in  
13 terms of *Preston*, in my analysis, it is not that the  
14 agency relied on factors which the legislature had  
15 not intended to consider, but it is the case that it  
16 entirely failed to consider an important aspect of  
17 the problem, offered an explanation for its decision  
18 that ran counter to the evidence before the agency,  
19 and was so implausible that it could not be ascribed  
20 to a difference in view or the product of agency  
21 expertise; therefore, I view it to be arbitrary and  
22 capricious, and, as I indicated, I'm declaring it  
23 invalid as exceeding the agency's statutory  
24 authority.

25 Now, on the next part of it, that didn't really

1       involve 227.12 because, as I indicated, there is  
2       case law -- the only case law we could find said  
3       that you did not have to petition to modify, amend  
4       or repeal existing rules, and in that case, we were  
5       talking about 17.04(1) which already existed. We  
6       could still challenge the validity of that.

7             The cases on that that we were able to find were  
8       *Sterling Secret Service, Inc., versus Michigan*  
9       *Department of State Police*, 174 N.W.2d 298, decided  
10       back in 1969 or '70; and then a little more recent,  
11       *Charleston Television, Inc., versus South Carolina*  
12       *Budget & Control Board*, 392 S.E.2d 671 decided by  
13       the Supreme Court of South Carolina in 1990. The  
14       former case was decided by the Michigan Court of  
15       Appeals Division No. 1. However, we still have the  
16       227.12 issue with respect to the non-rule, and then  
17       we go take up that issue now, the non-rule.

18            I agree with the plaintiffs that the purpose --  
19       227, it can be technical, and you can certainly get  
20       kicked out of court on a petition to review an  
21       administrative decision for some pretty technical  
22       violations of service statutes. If you miss the  
23       filing date by one day, you're out.

24            But on the rulemaking, rulemaking has a different  
25       function. It involves getting input from the

1 citizens, and I think I agree with the plaintiffs  
2 that, in fact, rulemaking was occurring, everybody  
3 knew it was occurring, a lot of input was going on,  
4 and the point of the exhaustion requirement is that  
5 people invoke the process. It's not to say a  
6 specific form really controls over substance.

7 Moreover, I also think there was, in substance,  
8 both substance and form, an essential compliance  
9 with any petitioning requirement because certainly  
10 at least five individuals were before the Board last  
11 summer requesting significant restrictions on the  
12 definition of tracking or trailing. The only thing  
13 that would say it wasn't perhaps entirely consistent  
14 with 227.12 was that the agency did not issue a  
15 clear statement as to the reason for its denial.

16 Even there, though, I think it was the hands  
17 being tied as well as the subsequent clarification  
18 in court that they didn't feel they had the  
19 authority I think was sufficient to meet that  
20 requirement. We certainly have been able to review  
21 the issue of the agency's authority.

22 Let me just follow my notes here. In this  
23 particular instance where we're challenging the lack  
24 of restriction on hunting, I think a different  
25 analysis applies than the one that I just applied to

1 the training issue, and that's because, generally,  
2 the absence of a rule is not going to be the basis  
3 for relief.

4 Now, there are exceptions, and one exception  
5 would be similar to what Mr. Lister and Ms. Siedman  
6 have suggested where there is a requirement that you  
7 set quotas for the zones, you establish the number  
8 of hunting licenses. If the Board failed to do  
9 those things, then mandamus could be sought. Even  
10 then the Court would ordinarily not itself decide  
11 what the right quotas are; it would order the Board  
12 to go decide those.

13 There is a next level of agency authority, and  
14 that's where the agency has the authority to act but  
15 fails to act. This was the case in our case or my  
16 view in our case. We did look at a number of cases  
17 on this, and it started really -- I would say I give  
18 credit to the intervenors. They had some good case  
19 law on this particular issue, but also where it  
20 started for us is we went back to *Preston* and we  
21 thought, well, maybe we should take a look at the  
22 underlying Supreme Court decision in *Motor Vehicle  
23 Manufacturer Association of the US, Inc., versus  
24 State Farm Mutual Auto Insurance Company*, 463 U.S.  
25 29, 1983. We looked at that case and a couple

1 others that I think are worth noting: *Litterer*  
2 *versus Judge*, 644 N.W.2d 357, this was decided by  
3 the Iowa Supreme Court, 2002; and then a couple  
4 cases cited by the intervenors: *Norton versus South*  
5 *Utah Wilderness Alliance*, 542 U.S. 55, decided in  
6 2004; and then a District of Columbia Circuit Court  
7 decision -- I think Judge Leventhal had passed away  
8 by the time this was decided in 1981 -- *WWHT, Inc.,*  
9 *versus FCC*, 656 F.2d 807. All of those cases  
10 recognize, to some extent, a challenge to an  
11 agency's failure to adopt a specific rule outside of  
12 the mandamus realm.

13 But in *Motor Vehicle Manufacturer Association of*  
14 *the US*, which is what *Preston* relied on -- and, of  
15 course, *Preston* itself didn't have to do with an  
16 agency's failure to act. They had a specific  
17 rule -- the Congress has expressly provided that I  
18 think it's the National Transportation Safety Board  
19 or some similar or maybe USDOT could not rescind  
20 prior safety regulations, or it could, but it would  
21 be subject to court review, the same as if they  
22 enacted it. So it had a special statutory review  
23 provision that we don't have here. These other  
24 cases recognized a right to take a look at an  
25 agency's decision not to do something, but they were



1 extremely deferential to the fact that the agency is  
2 charged with making those decisions.

3 Moreover, it's almost nonjusticiable to come up  
4 with what standard we would say -- of the universe  
5 of possible rules, what rules should be adopted by  
6 this agency that weren't? There's probably millions  
7 of rules that we could argue that should be adopted  
8 that weren't. But I found *Litterer versus Judge*,  
9 the one written by Judge Kady (ph), to be probably  
10 the most accurate because, in that case, it was made  
11 clear by the Iowa Supreme Court you could, in fact,  
12 ask a court to rule on whether an agency had the  
13 authority to adopt a rule but not necessarily to  
14 order them to adopt a rule. So it was the  
15 intermediate between mandamus and nothing.

16 And that was my essential ruling, and I felt  
17 quite comfortable with it last summer, and I feel  
18 quite comfortable with it today. I find this agency  
19 does have the authority to adopt further definitions  
20 and restrictions on the use of dogs to track and  
21 trail wolves. Tracking and trailing wolves in  
22 hunting is not a self-defined term, and as with the  
23 non-clubbing and the nighttime restrictions, it is  
24 certainly appropriate and actually, just under  
25 Section 21, authorized for the agency to exercise

1           that authority.

2           So that would be my ruling, a declaratory  
3 judgment, that the agency has that authority. And  
4 now you can't get a letter saying to you the Judge  
5 is wrong. Before it's fine, you did, you were  
6 legally entitled to, but now you cannot disregard  
7 that ruling unless you get it reversed on appeal,  
8 stayed on appeal or reversed by the legislature, all  
9 of which may happen, but I'm just saying at this  
10 time that is your authority. I'm telling you you  
11 have that authority, and it is based on Section 21  
12 of Act 169 and the analysis that I've already gone  
13 through on that statute.

14          But that's the extent of my ruling. I cannot say  
15 on this law that there is a mandamus here. They  
16 have the authority, but they didn't have the  
17 obligation to do more than they did. I cannot  
18 discern some justiciable standard by which I can  
19 tell them go further regulate the hunting -- the  
20 tracking and trailing of wolves.

21          As I said, that would be the extent of my ruling.  
22 That's because there is a real difference in my mind  
23 and I think the law as well, hopefully the law as  
24 well, that there is a real difference between an  
25 affirmative rule which is challenged as invalid --

1 in this case, the authorization to use dogs to train  
2 to hunt wolves without any restriction -- versus the  
3 nonexistence of a rule. And the nonexistence of a  
4 rule is largely nonjusticiable and really is a  
5 matter for this Court only to declare what the  
6 authority of the agency is, not to tell them how to  
7 exercise it.

8 So that will be my ruling. I have not prepared a  
9 written ruling because I wasn't sure where we were  
10 going today, but I will issue one early next week.  
11 It is possible, as I indicated, maybe there will be  
12 some examination of this ruling or other issues, not  
13 just to say my ruling but even just how you use dogs  
14 to hunt wolves in the legislature in the next  
15 biennium.

16 I don't view it really as a red issue/blue issue.  
17 I think a lot of people in this state think it's  
18 nuts to use dogs to hunt wolves. I don't have a  
19 strong opinion one way or the other, and even if I  
20 did, that's not the question. I respect the fact  
21 that a small minority of people who want to use dogs  
22 to hunt wolves have gotten their way notwithstanding  
23 whatever the majority might believe. I have to say  
24 my hat's off to you. If you can accomplish  
25 legislatively what a large number of people in this

1 state think is a crazy idea, and there's only about  
2 20 of you or 200 or whatever the number is, you've  
3 manipulated the system in a way that's gotten  
4 success for you, and it's impressive. I don't  
5 personally take any offense of the fact that a small  
6 number of people occasionally get their way in the  
7 legislature. Occasionally there's laws enacted  
8 regarding judges, which there's probably as few  
9 judges as there are people who want to use dogs to  
10 hunt wolves. That's just how it is.

11 But I do think the issue has been more -- the one  
12 advantage to the plaintiffs at this time,  
13 notwithstanding the fact that I don't think their  
14 political position has been enhanced by the last  
15 election, but the fact is the matter is now more in  
16 the public eye than I think it was before. Maybe  
17 I'm wrong on that. I know it's in the public eye  
18 because I've got the case. I don't know if I would  
19 have followed it at all if I hadn't gotten the case.  
20 When I got the case, I didn't know it was an issue,  
21 but I think, a lot of people, that's probably the  
22 case.

23 The plaintiffs may have some remedy in the  
24 legislature, but at the same time, the defendants  
25 might. That's not this Court's determination. Mine

1 is just to say what I believe the law is today, to  
2 apply it to the record that was given to me, and  
3 that's what I've done as best I can. Is there  
4 anything further?

5 MR. SINDERBRAND: Your Honor, in view of  
6 your decision, we would like to submit affidavits  
7 just to confirm the standing of the plaintiffs, and  
8 we can do that early next week, if that's okay with  
9 you.

10 THE COURT: All right. Any objection to  
11 that? Extracting the concession from them, what do  
12 you want to do then? Want me to hold off on issuing  
13 my written decision? It wouldn't be a long  
14 decision. It would be for the reasons stated on the  
15 record.

16 MR. SINDERBRAND: We can do it by Tuesday,  
17 your Honor, if that's okay.

18 THE COURT: Okay. Any problem with that?

19 MS. SIEDMAN: Yeah. We submit that, after  
20 the Judge's ruling, to submit standing declarations  
21 or affidavits at this point is far too late, and I  
22 think that standing is an issue that may still be in  
23 question if anyone decides that we want to take this  
24 up on appeal. So I think it would be inappropriate  
25 to allow an opportunity to provide affidavits to

1       which we can't respond. So I would say that they  
2       accepted their standing as they presented it, and we  
3       stipulated to go forward based on the standing as  
4       they presented it.

5               THE COURT: Mr. Dawson.

6               MR. DAWSON: Well, I don't know why we  
7       need the submission of affidavits given the  
8       stipulation we made.

9               THE COURT: Why do you need it given the  
10      stipulation they made, Mr. Sinderbrand?

11              MR. SINDERBRAND: My understanding --  
12      well, maybe I didn't quite understand the  
13      stipulation. If the stipulation is that the  
14      affidavits would say what's in the --

15              THE COURT: The Complaint.

16              MR. SINDERBRAND: -- the Amended Complaint  
17      and that stands, I'm fine with that.

18              THE COURT: That was it, though, wasn't  
19      it?

20              MS. SIEDMAN: That was it.

21              THE COURT: That was it, Mr. Dawson?

22              MR. DAWSON: Yeah, that's my  
23      understanding.

24              THE COURT: So he's fine. Anything else?  
25      Go ahead.

1 MR. SINDERBRAND: And that is the stay  
2 that exists with respect to hunting. I know the  
3 hunting season won't happen again until next  
4 November or October, but is that --

5 THE COURT: The temporary injunction will  
6 be dissolved, is dissolved, will be dissolved as  
7 soon as I issue the -- I would intend my decision --  
8 there's some rules on this; when it's issued, when  
9 it's rendered, when it's entered. But I'm intending  
10 that my judgment be effective as soon as possible on  
11 this, so it's the invalidity as to the one, the  
12 declaration as to the other, and the temporary  
13 injunction is dissolved because we've now gone to  
14 final judgment.

15 By the way, one thing. This is where I came to  
16 as I was thinking through all our arguments about  
17 what about the guys from the Bear Association that  
18 think it's their constitutional right to go out and  
19 train dogs if I don't have a restriction on it:  
20 They are parties, and they may be subject to some  
21 further relief of the Court, but it has not been  
22 presented in any kind of formal way or appropriate  
23 way that I could rule on today.

24 I was asked to rule on the validity of rules, and  
25 that's what I did. So I think we'll just leave that

1 issue, if it ever comes up, for another day. I  
2 think Mr. Lister said the prudent hunter would take  
3 into consideration the Court's ruling. Anything  
4 else?

5 MR. ANDRYK: Can I ask you a clarifying  
6 question on your ruling?

7 THE COURT: You may.

8 MR. ANDRYK: You're issuing an injunction  
9 on 17.04(1) as applied to --

10 THE COURT: No, a declaration. It's  
11 invalid.

12 MR. ANDRYK: It's invalid?

13 THE COURT: Yeah, as applied to -- to the  
14 extent it authorizes the training of dogs to hunt  
15 wolves.

16 MR. ANDRYK: We're involved in a  
17 rulemaking process that we're going to hearing on  
18 this spring. It's a permanent rule proposing  
19 restrictions on training dogs to hunt wolves. So  
20 when we get through that rule process and the  
21 Department promulgates some restrictions on training  
22 dogs to hunt wolves, that's going to be a new rule.

23 THE COURT: I think what you have to do at  
24 that point is ask for relief from judgment in a  
25 formal way under 806.07, and I'll take a look at it,



1 and if it seems appropriate that we do something  
2 with that ruling, we'll do it.

3 MR. DAWSON: Although, if the DNR adopts a  
4 superseding rule, a new rule, then it's a new ball  
5 game; right?

6 THE COURT: That's so hypothetical for me.  
7 We'll take up the ball games as they get dealt us.  
8 You have a new ball game, come into court, and I'll  
9 take a look at it.

10 MR. SINDERBRAND: Judge, for clarification  
11 by virtue of your ruling on NR 17, does the  
12 declaration mean that training with dogs to hunt  
13 wolves on free-roaming wolves is not authorized --  
14 is prohibited under state law?

15 THE COURT: No. My rule is that that rule  
16 is invalid. 17.04(1) is invalid to the extent it  
17 authorizes the training of dogs to hunt wolves --  
18 wild-roaming wolves. That's what my ruling is. You  
19 need any supplemental relief or whatever, you're  
20 going to have to bring it in a more formal way.

21 Anyway, it's been a more interesting case than I  
22 ever thought it would be, and it certainly was a  
23 pleasure working with all of you. We may come back  
24 into contact as things develop, either if they seek  
25 supplemental relief or the agency adopts the

1 permanent rules, and when that happens, we'll just  
2 take it up as needed. So thank you all, and all the  
3 audience, thanks for enduring all this. You were a  
4 good audience. We're adjourned.

5 (Adjourned at 4:02 p.m.)

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1 STATE OF WISCONSIN )  
 ) ss  
2 COUNTY OF DANE )

3 I, THERESA L. GROVES, Official Court Reporter, do  
4 hereby certify that I took in shorthand the  
5 above-entitled proceedings held on the 4th day of  
6 January 2013, I reduced the same to a written  
7 transcript, and that it is a true and correct  
8 transcript of my notes and the whole thereof.

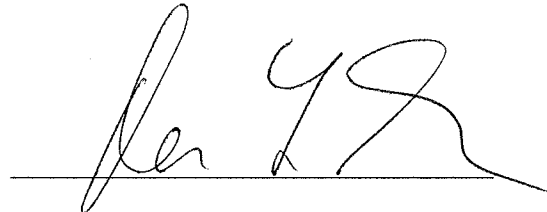
9 Dated at Madison, Wisconsin this 25th day of  
10 January 2013.

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Theresa L. Groves, RPR  
Official Court Reporter

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STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 17

DANE COUNTY

=====

WISCONSIN FEDERATED  
HUMANE SOCIETIES, et al.,

Plaintiffs,

-vs-

Case No. 12CV3188

CATHY STEPP, SECRETARY,  
WISCONSIN DEPARTMENT OF  
NATURAL RESOURCES, et al.,

Defendants,

and

WISCONSIN BEAR HUNTERS  
ASSOCIATION, et al.,

Defendants-Intervenors.

COPY

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DATE: January 16, 2013

TIME: 3:24 p.m.

BEFORE: HONORABLE PETER C. ANDERSON  
Circuit Court Judge

PROCEEDINGS: Oral Ruling

REPORTED BY: Theresa L. Groves, RPR  
Official Court Reporter

APPEARANCES: ROBERT L. HABUSH, Attorney at Law,  
Milwaukee, Wisconsin, appeared  
telephonically on behalf of the  
Plaintiffs.

JODI HABUSH SINYKIN, Attorney at Law,  
Milwaukee, Wisconsin, appeared on behalf  
of the Plaintiffs.

1 APPEARANCES: CARL SINDERBRAND, Attorney at Law,  
2 Madison, Wisconsin, appeared on behalf of  
the Plaintiffs.

3 THOMAS DAWSON and CYNTHIA HIRSCH,  
4 Assistant Attorneys General, appeared on  
behalf of the Defendants.

5 THOMAS JANCZEWSKI, Attorney at Law,  
6 Milwaukee, Wisconsin, appeared  
7 telephonically on behalf of United  
8 Sportsmen of Wisconsin, Wisconsin Bear  
9 Hunters Association, Safari Club  
10 International, and US Sportsmen's Alliance  
11 Foundation, Defendants-Intervenors.

12 ANNA M. SIEDMAN, Attorney at Law,  
13 Washington, D.C., appeared telephonically  
14 on behalf of Safari Club International,  
15 Defendant-Intervenor.

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1 THE COURT: This is 12CV3188, Wisconsin  
2 Federated Humane Societies, Inc., et al., versus  
3 Cathy Stepp, et al. Could I have the appearances,  
4 please.

5 MS. SINYKIN: Jodi Habush Sinykin.

6 MR. SINDERBRAND: Carl Sinderbrand on  
7 behalf of the plaintiffs, and Robert Habush is on  
8 the phone.

9 MR. DAWSON: Assistant Attorney General  
10 Thomas Dawson for Defendant DNR.

11 MR. ANDRYK: Chief Counsel Tim Andryk for  
12 Wisconsin Department of Natural Resources.

13 MS. HIRSCH: Cynthia Hirsch, Assistant  
14 Attorney General, for defendants.

15 THE COURT: Ms. Siedman.

16 MS. SIEDMAN: Yes, I'm here, your Honor,  
17 here for Defendant-Intervenor Safari Club  
18 International.

19 THE CLERK: There is one more I forgot.  
20 I'm sorry. Thomas Janczewski.

21 THE COURT: Sorry. We have to do this  
22 over again. We'll call you right back, Mr. Habush  
23 and Ms. Siedman. Off the record.

24 (Off the record)

25 THE COURT: We are back on the record.

1           What we did off the record was added Mr. Janczewski.  
2           Mr. Janczewski, you're there?

3                         MR. JANCZEWSKI: I am, your Honor.

4                         THE COURT: Okay. And everybody else that  
5           should be is either here or on the phone. We won't  
6           go through all the appearances again. Ms. Siedman,  
7           my understanding was Mr. Lister wasn't going to  
8           participate today.

9                         MS. SIEDMAN: That is correct, your Honor.

10                        THE COURT: And that's good because I was  
11           just planning on issuing a supplemental ruling here  
12           to clarify something that was brought to my  
13           attention by the plaintiffs.

14                        Just as a matter of procedural background, having  
15           issued my decision back Friday before last, I had  
16           intended that that would be our final decision in  
17           the case; although there might be subsequent  
18           proceedings that we talked about, this would be  
19           sufficient for the parties to appeal or whatever  
20           they wanted to do with the case.

21                        And then, before I had a chance to actually issue  
22           the paperwork on that and we had a trial scheduled  
23           that week, I got the request from the plaintiffs to  
24           hold off so they could request reconsideration or  
25           clarification. The State objected, and I thought

1 the State's objection probably was procedurally  
2 appropriate, but the fact is, I would just assume  
3 knock out one piece of paper, and then you can take  
4 it from there.

5 And the fact is I also thought the plaintiffs'  
6 request for clarification, without actually hearing  
7 any argument on it, was appropriate, and it was  
8 something I had thought about in the case, so it was  
9 something that I might have even mentioned when I  
10 was making my decision, but I neglected to do so  
11 probably because I didn't see it as central to the  
12 issue. So I went back and am prepared to address  
13 that issue principally right now.

14 As I went through that process, it did modify my  
15 view a little bit on where we're at, and I'll  
16 indicate that as I go through this. Basically the  
17 real essence of my ruling, though, was the  
18 distinction between the hunting and the training  
19 being principally divided between lack of a rule or  
20 a challenge to the lack of a rule versus the  
21 existence of a rule that did authorize training,  
22 even though there hadn't been any consideration as  
23 to how that would impact anybody should wolves be  
24 hunted. So that was still a basic dichotomy in this  
25 case that I continue to adhere to.



1           As I say, in the hunting case, I was dealing with  
2           the claim that I viewed, essentially -- regardless  
3           of how it was sculpted, it was essentially a  
4           challenge to the fact that the Board had not adopted  
5           a rule that the plaintiffs felt should have been  
6           adopted. I remember, even early on, suggesting  
7           whether really what was being sought was mandamus,  
8           and the case of *Norton versus Southern Utah*  
9           *Wilderness Alliance*, to me, confirmed that that was  
10          a correct instinct; that normally, if we're talking  
11          about an agency's failure to do something, mandamus  
12          is the appropriate remedy.

13          When it comes to rules, though, you really need a  
14          pretty plain duty for the Court to be ordering  
15          something. For example, you might have had a law  
16          that directed the Board establish rules for the safe  
17          and humane use of dogs that are used to track and  
18          trail wolves in hunting, and then, if they didn't do  
19          that, then we would issue a mandamus. Even then, we  
20          wouldn't be telling them what rule to adopt; we  
21          would just tell them to do it. That's what the  
22          mandamus part of it is.

23          I viewed this case, because it was brought this  
24          way, as essentially a 227.40 case, which is one  
25          seeking a declaration that a rule or rules were

1       invalid. In the last analysis, I really couldn't  
2       find anything on the hunting side to declare  
3       invalid. There was no actual affirmative rule to  
4       declare invalid; however, I do believe it's the case  
5       and further research indicated to me that the case  
6       law recognized the failure to act by an agency,  
7       based on an incorrect view of its legal authority,  
8       as something that is actionable. It is actionable.  
9       It's just that it's not actionable in the sense of  
10      then telling somebody to adopt a rule, and I'll get  
11      to what it is actionable in the sense of.

12             And, in fact, we had a couple cases I cited last  
13      time that recognize that distinction, and this again  
14      was one that I thought was correct when we talked  
15      last summer, and I'll get to that in a moment when I  
16      talk about the injunction that I issued.

17             But, for example, in the *WWHT versus FCC* case  
18      that we cited last time from the D.C. Circuit,  
19      656 F.2d 807, it talked about -- I always have  
20      difficulty getting the page numbers right on West  
21      Law. This would have been at page 819 I believe of  
22      F.2d. It mentioned a case of *NAACP versus FPC*, also  
23      D.C. Circuit 1975, 525 F.2d 432, affirmed 425 US  
24      662, and in that case, the D.C. Circuit had vacated  
25      the FPC's order, Federal Power Commission I believe,

1 dismissing petitioners' request for rulemaking on  
2 the ground that the commission was mistaken in  
3 concluding that it lacked jurisdiction to promulgate  
4 regulations concerning employment discrimination by  
5 its regulatees.

6 And then similarly, in the Iowa Supreme Court  
7 case that I cited last time, *Litterer versus Judge*,  
8 644 N.W.2d 357, that's the Iowa Supreme Court  
9 decided back in 2002 and it looks like this is at  
10 page 362, the Court said "The failure of an agency  
11 to act based upon the perceived lack of legal  
12 authority to act and the failure to act based on the  
13 exercise of discretion are different concepts. They  
14 may both be reasons for the failure to act, but the  
15 lack of authority to act does not implicate the  
16 exercise of agency discretion because there can be  
17 no discretion to exercise if there was no authority  
18 to act; thus, judicial review of the authority of an  
19 agency to act does not undermine agency decision  
20 making or meddle in the wisdom of agency decision  
21 making.

22 For this reason, we do not believe the denial of  
23 rulemaking, based upon the lack of legal authority,  
24 falls within the" -- quote -- "on-the-merits" --  
25 close quotes -- "requirement," and that's under Iowa

1 statutes, "unless the agency has no legal authority  
2 to act. Yet, this requires a judicial  
3 determination."

4 And I just like this internal cite here. "See  
5 *Hamilton versus City of Urbandale*, 291 N.W.2d 15 at  
6 page 19, Iowa Supreme Court, 1980" -- parentheses --  
7 "The interpretation of a statute can only be  
8 determined by the judiciary" -- close parentheses.  
9 And this is an aside to this quotation. I like that  
10 because, remember, last time I was saying the  
11 judiciary, not the legislature, determines what  
12 legislation means.

13 "Courts do not invade the discretion of the  
14 agency by examining the legal authority to act, and  
15 an agency that has authority to act but fails to  
16 exercise that authority based upon a false belief  
17 that there is no such authority abuses its  
18 discretion."

19 So that's where I saw this case because I had  
20 concluded, and I believe rightly but, of course, it  
21 could have been wrongly, that, under Section 21 of  
22 Act 169, the agency did have the authority to  
23 promulgate emergency rules that address the safe and  
24 humane use of dogs in hunting wolves, they did have  
25 that authority, and they told me as well they didn't

1 exercise that authority because they didn't believe  
2 they had it. They didn't do anything because they  
3 didn't believe they had that authority.

4 That was more found in the representations of  
5 counsel at the end of August in the two proceedings  
6 we had than it was -- it was less clear in the  
7 records, but I was ready to accept that  
8 representation. So that's where I saw the claim as  
9 to hunting falling; in a mistaken belief by the  
10 agency that it lacked authority to take up the issue  
11 of establishing rules for the humane and safe use of  
12 dogs in hunting wolves. That's where I saw that.

13 Now, at this point in the case, though, the hunt  
14 was over. Regardless of what I did as to that  
15 issue, I didn't really need to take any further  
16 action to protect dogs or people because further  
17 hunting was not contemplated until next fall at the  
18 earliest. So that's why it sort of changed the  
19 nature of what I was dealing with two weeks ago.

20 Now, I have to say, when I issued my decision on  
21 January 4th, I was not actively considering the  
22 possibility of a remand to the agency on this issue,  
23 and it may be that that was because I had a sense I  
24 knew what the agency would do, or it may be because  
25 my view of the review on a remand would be extremely

1        deferential. But I think the main reason was that I  
2        was doing this as a 227.40 case which is seeking a  
3        declaration that some rule or rules are invalid, and  
4        I couldn't find the rule that I would declare  
5        invalid, so I couldn't see what relief I'd grant  
6        there, rather than a 227.12 case which would be a  
7        request for rulemaking.

8            However, as I thought about this further just in  
9        the last week and considering the authority that  
10       I've looked at, I think it would not be uncommon, if  
11       an agency had the authority but failed to exercise  
12       it in the mistaken belief that it didn't have the  
13       authority, to, in fact, remand the matter to the  
14       agency.

15           Now, there were some aspects of the record that  
16       weren't quite as clear and crisp as I might have  
17       preferred on this. First of all, as I said, it  
18       wasn't quite clear exactly how the Board came to the  
19       conclusion last summer that it lacked the authority  
20       that it said it didn't have, but, again, I accepted  
21       the representations of counsel essentially on this.  
22       And, also, the plaintiffs did not formally request  
23       rulemaking under 227.12, so I don't know that that  
24       -- while I ultimately held on January 4th that they  
25       weren't required to do more than they had done, it

1 wasn't quite out there that the agency should now  
2 issue some kind of reaction to the request.

3 Normally, under 227.12(3), the agency has to  
4 either decide to do rulemaking or not do rulemaking  
5 and issue some kind of statement, if it doesn't do  
6 rulemaking, why it didn't. My guess is that that's  
7 going to be viewed rather deferentially, in fact,  
8 probably extremely deferentially, but still the  
9 agency probably would have to do that.

10 Further making it difficult or making the record  
11 a little less clear and crisp than I might have  
12 liked was that the September 26th agenda seemed to  
13 speak to training rather than hunting, which was the  
14 point the plaintiffs made. The Board definitely  
15 considered a fair amount of hunting issues, but that  
16 wasn't really on the agenda.

17 And it's not clear, when you go back and read the  
18 transcript and the minutes, exactly what the Board  
19 thought its authority was at this point. I know it  
20 was sort of thinking it might be able to satisfy the  
21 Court by considering the issue, but not really in  
22 the sense of saying, "Yes, we have the authority to  
23 consider the issue," and particularly since, you may  
24 recall, in the training issue, they continued to  
25 assert they didn't have the authority to address the

1 issue. So all of that made it fairly unclear.

2 And the decision on when to dot Is and cross Ts  
3 in this kind of case really involves the  
4 intersection of judgment, law and realism. And  
5 while I might say, well, I think I know what the  
6 Board would do if I remanded it, telling them  
7 basically, well, what I'm going to tell them,  
8 basically you do have the authority and treat this  
9 as though you've got a pending 227.12 petition and  
10 just act on that because there's two things you can  
11 do: You can deny it or you can continue with  
12 rulemaking.

13 I'm not sure any further procedure is needed, any  
14 further hearing is needed. I'm not going to make a  
15 ruling on that, but I'm also not going to say  
16 specifically that the decision would be viewed very  
17 deferentially, but that's certainly consistent with  
18 all the law I have. And I don't want this case to  
19 go on and on and on while we keep doing things where  
20 we know what the outcome is going to be.

21 But, on the other hand, you never know. Just  
22 because I think I know what the Board would do or  
23 can guess what I think the Board would do on that  
24 kind of remand, you never know. They might say,  
25 "Okay, it's clearer now what we're supposed to do,"



1 and maybe, at that point, they would decide to do  
2 further rulemaking. So I can't conclusively predict  
3 what they would do.

4 Do you have, by the way, our order?

5 THE CLERK: I do.

6 THE COURT: Do you have it handy by any  
7 chance?

8 THE CLERK: I do.

9 THE COURT: While she's doing that, let me  
10 go back then to the issue of was I wrong last summer  
11 when I concluded that the Board's failure to take  
12 this up was arbitrary and capricious. Yes and no.  
13 I think the case law says it is arbitrary to not  
14 take up an issue that you have the authority to take  
15 up and the mistaken belief that you don't have the  
16 authority. So in that sense, I was right.

17 But you recall, when we met on January 4th, I had  
18 concluded that the case law we were principally  
19 dealing with, such as *Preston* and the case that  
20 *Preston* had relied on from the US Supreme Court,  
21 *Motor Vehicles Manufacturer Association*, 463 US 29  
22 decided in 1983, those are actually cases where  
23 there was affirmative agency action. There was an  
24 affirmative rule; although, in the *Manufacturer's*  
25 case, it was an affirmative changing of a rule under

1 a special law of Congress for judicial review. And  
2 similarly, *Liberty Homes*, there was a specific rule.  
3 It wasn't the absence of a rule.

4 In that sense, I think I probably was not  
5 applying the precise legal standard that would apply  
6 in this case and was a reason why that's as far as I  
7 wanted to go last time was, in entering the  
8 declaratory judgment, to say that the agency does  
9 have the authority under Section 21 to take up  
10 issues of the humane and safe use of dogs in  
11 hunting, but not to tell them what to do beyond that  
12 because I didn't have here something that would  
13 allow me to issue a mandamus.

14 And even if you have mandamus, again, you just  
15 tell the agency go take it up, go do more, go decide  
16 more. You don't say here's how you have to decide  
17 it. I wasn't even there. I just had a fairly broad  
18 grant of authority, and it was up to the agency to  
19 determine what to do.

20 So last summer, I feel as though I had what could  
21 be called an arbitrary and capricious conclusion of  
22 the agency or lack of action on the agency based on  
23 this incorrect assessment of its authority. But  
24 coupled with that, of course, I had imminent and  
25 what appeared to be pretty significant irreparable

1       harm that was not really disputed. So I had a legal  
2       basis, plus irreparable injury, and in those  
3       circumstances, it's not at all uncommon to grant a  
4       temporary injunction.

5             There is a change in my view in the law on this  
6       since last summer in that I don't think *Preston* and  
7       related cases adequately provide a standard for  
8       assessing the failure of an agency to adopt a rule,  
9       to adopt a rule, absent either a direction to go  
10      adopt a rule of a certain kind -- for example, as I  
11      said, a rule to deal specifically with the safe and  
12      humane use of dogs in hunting -- absent that, except  
13      in this very special case where the agency has  
14      concluded it doesn't have authority to do anything,  
15      and in my view, it does.

16            Again, there the remedy is to do what I'm  
17      proposing to do, which is to declare that the  
18      Wisconsin Natural Resources Board has the authority,  
19      under Section 21 of 2011 Act 169 -- that's the right  
20      rule; right? Right statute; right? Right law;  
21      right? Okay -- to promulgate emergency and final  
22      rules for the safe and humane use of dogs in the  
23      tracking and trailing of wolves in hunting. So that  
24      is my declaration. That is a declaratory judgment.

25            I am going to go further this time than last

1 time, though, and would remand the matter to the  
2 Natural Resources Board with instructions that,  
3 within 45 days of the date of this order, the Board  
4 determine, in accordance with Wisconsin Statute  
5 Section 227.12(3), whether to undertake further  
6 rulemaking pursuant to the authority that I've just  
7 declared. So it will be up to the Board to do what  
8 it does, and 227.12(3) provides the procedure for  
9 that, and the basic procedure is you either take up  
10 rulemaking or you deny the request; if you deny the  
11 request, you need some statement as to why you  
12 denied it.

13 I don't want this case drawn out further. I  
14 mean, I'm happy to hear any issue, it is my job, but  
15 I do really feel this is going to be the final  
16 ruling in this case, except for supplemental relief  
17 that might exist. So all I can say to the  
18 plaintiffs is I don't want to think in advance and  
19 say what they've done is fine because I don't know  
20 what they've done. They haven't done anything.

21 But I do want to say to the plaintiffs, the  
22 record I had from September 26th, if that had been  
23 properly on the agenda and if there had been less  
24 ambiguity about the agency's authority, I strongly  
25 suspect I would have sustained the Board's decision

1 not to do anything further, and that was because  
2 they actually looked at some alternatives, including  
3 the mortality during the winter, and were looking to  
4 get more information, and it was what I would call  
5 rational. It's not necessarily what I would do, but  
6 it's not my job to determine that. It's their job  
7 to determine that. My job is to determine the  
8 lawfulness of it.

9 So that will be my order. I will reiterate my  
10 order that the defendants-intervenors' renewed  
11 Motion to Dismiss for lack of standing is denied. I  
12 will incorporate the Court's ruling of September  
13 14th in that regard in my recital. And I will  
14 reiterate my declaration that NR 17.04(1) is invalid  
15 as exceeding agency authority to the extent it  
16 authorizes the training of dogs on free-roaming wild  
17 wolves.

18 Now, as I said, I don't see the need for any  
19 further injunctive relief at this time, at least as  
20 to the agency. As we said, maybe there's something  
21 we have to do with the intervenors if they go out  
22 training, but we're going to take that up if I have  
23 to. I'm not doing that today. But I don't think I  
24 need to do what I did last summer with respect to  
25 the agency because the hunt is over for the year.

1           In 45 days, they'll have acted on this, and  
2           assuming they act lawfully, and I'm going to presume  
3           the agency will act lawfully, there would be no  
4           basis for granting relief. And if the worst case  
5           comes, you can come back to this Court or the Court  
6           of Appeals or somewhere in the fall, if there's some  
7           realistic basis, to get an injunction. But right  
8           now, the injunction isn't needed on the hunting.  
9           Even if I say what they've done or haven't done is  
10          arbitrary and capricious, the hunt is over for this  
11          year, and we can just let the injunction be  
12          dissolved, as I indicated.

13          Since I have you all here, let me just say a  
14          couple more words. I was just going to mention a  
15          few more things on the training issue, just since I  
16          do kind of have you here, and this, of course, is  
17          because it also stands, for me, in contrast with the  
18          hunting issue.

19          I would also note that the provisions in 227.10  
20          and 227.11 that were relied on in objecting to  
21          hunting really don't seem that opposite here to  
22          training. There has been, as I said before, a  
23          substantial change in the legal landscape as to  
24          rules, even though there was, in place, a rule, we  
25          have an affirmative rule, but there's been a

1 substantial change in the legal landscape that would  
2 appear to authorize, by the text of that rule, the  
3 training of dogs to hunt wolves in the wild with  
4 virtually no restriction, other than don't kill the  
5 wolf I believe. And the impact on dogs and wolves  
6 was certainly not considered at the time that rule  
7 was adopted, and no one was ever claiming that.

8 I would point out one of the cases that I relied  
9 on which we got from the intervenors, the *WWHT*  
10 decision, points out that there is a special rule  
11 for judicial review of an agency's failure to make  
12 rules that "An agency may be forced, by a reviewing  
13 court, to institute rulemaking proceedings if a  
14 significant factual predicate to a prior decision on  
15 the subject either to promulgate or not promulgate  
16 specific rules has been removed." That's at page  
17 819 of the *WWHT* decision. That really is much more  
18 like what we have here. And then, on top of it, I  
19 have the September 26th minutes and all the various  
20 attachments and all the submissions as well as the  
21 transcript of what went on there.

22 And as to the training part, I just would  
23 reiterate, realistically, this contrasts again with  
24 the hunting. Even though hunting wasn't on the  
25 agenda, I thought really the Department had sort of

1 a substantial response on the hunting. On the  
2 training, I really found there to be quite a bit of  
3 confusion as to even what the Board was doing since  
4 they were talking so much about hunting. There was  
5 confusion between whether they were talking about  
6 hunting or training.

7 This not only occurred in the Board's discussion  
8 but also in the various statements that were  
9 provided to the Board by various people. The  
10 legislators who said that they didn't have the  
11 authority to adopt rules, nevertheless, also said  
12 they anticipated rules would be similar to the bear  
13 rules, which, of course, wasn't adopted. And, in  
14 fact, I think a reasonable person would think you  
15 would at least consider, in a real serious way,  
16 adopting training rules that would match the hunting  
17 restrictions, and that just didn't happen here.

18 The actual analysis was quite muddled. They  
19 continued to believe or at least the movement  
20 continued to believe, and the legislators, as I said  
21 last time, helped them along in this belief and  
22 actually I think I also said counsel did, that they  
23 didn't have authority to do anything. So it was a  
24 very muddled approach to training that left a very  
25 significant issue untouched and really punted was



1           what they did on this one, which made some sense for  
2           hunting because you can say let's wait to get some  
3           information.

4           But hunting had restrictions, but on training,  
5           there were absolutely no restrictions and very  
6           little way of articulating why waiting and just  
7           seeing what happened was a good idea, and that was  
8           the extent of really the discussion. It was very  
9           limited and again relied also on the fact that they  
10          did not believe they had authority.

11          And, again, this wasn't some minor issue. This  
12          had to do with the first-ever use of dogs in the  
13          United States, since wolves became endangered, to  
14          hunt wolves. It wasn't just the state. It was  
15          anywhere in the country. And there are rules for  
16          how you train dogs to hunt rabbits, but nothing at  
17          all on what you do when you train a dog to hunt  
18          wolves. And everyone in the court on January 4th,  
19          all the attorneys agreed that the one thing the  
20          Board did not do was authorize training of dogs to  
21          hunt wolves.

22          So I don't even see this part of the decision  
23          turning on whether Section 21 authorized the Board  
24          to adopt emergency rules relative to training. I  
25          had and have an existing rule that authorizes the

1 use of dogs in training, and it has not considered  
2 all of these many factors, and it certainly didn't  
3 consider it at the time that the rule was adopted  
4 and the risk to wolves and the risk to dogs and how  
5 you're going to approach that.

6 But the fact is I did conclude that the Board did  
7 have the authority to address training under Section  
8 21 of Act 169, and that only made it worse because  
9 it didn't even have to use the regular emergency  
10 rulemaking process. There was this streamlined  
11 process available to it. So, to me, it underscored  
12 the inappropriateness of relying on an existing rule  
13 that was adopted long before wolf hunting was  
14 permitted without any real serious consideration of  
15 what was needed to make that a safe venture for all  
16 involved.

17 This is my final comment here. After I thought  
18 about how does my decision look just to somebody  
19 from the outside, it would be natural for you to  
20 wonder, well, wait a minute. You can use dogs to  
21 hunt wolves, but you can't train the dogs to hunt  
22 wolves? And that seemed a little odd to me. Like,  
23 who would set that up? Well, I didn't set it up.  
24 It wasn't my decision to authorize dogs in the first  
25 place. It wasn't my decision to authorize the

1 training of dogs. I'm just merely applying the law,  
2 and this is how the chips fall.

3 I would point out, though, that this sense that  
4 the two really go hand in hand buttresses my  
5 conclusion that, in fact, the Board did have the  
6 authority under Section 21 to take up training and  
7 not really hunting; that really training is a close  
8 component to hunting, unless we plan on using dogs  
9 that never had any training, and, therefore, the  
10 Board would have authority to address those issues  
11 that were necessary to ensure the safe and humane  
12 use of dogs in hunting and training to hunt. Again,  
13 the reason for this distinction in outcome is that  
14 there is a legal difference between these two  
15 aspects of a challenge to a non-rule versus the  
16 existence of a rule.

17 And finally I point out that there are  
18 restrictions that are contained in the statute and  
19 the rule that the Department adopted as to hunting.  
20 In contrast, there's really nothing with respect to  
21 training, aside from the don't-kill-the-wolf rule.  
22 So there are those reasons why it came out this way,  
23 but it is principally driven by my view of what the  
24 law is and what the record said.

25 I guess I had one final comment. It occurred to

1 me perhaps I should strike my comments at the end of  
2 the proceedings that had to do with how things might  
3 go in the political process and all that. But the  
4 reality is the political process is there, and  
5 everybody knows it's there, and that's how it got  
6 here in the first place is we got this law through  
7 the political process.

8 The only thing I would change there is I guess I  
9 would strike my statement that my hat was off to the  
10 people that wanted to use dogs for getting their  
11 legislation passed. The Court doesn't tip its hat  
12 to anybody who succeeds in legislation. That's just  
13 how it works. And so I was being dry at that point,  
14 and I'll strike that part of my comments.

15 As to what might occur politically and what --  
16 and there were certainly, as I said, political  
17 aspects. Obviously, it doesn't get adopted except  
18 through the political process, and there were parts  
19 of the case that suggested political components.  
20 But heck, that's government. Outside of the  
21 judiciary, we expect the executive and legislative  
22 branches to be somewhat political. We call them the  
23 political branches.

24 I'm not going to go further down that. I'm  
25 putting my hat back on my head in terms of the

1 hunters' ability to get this through. So that's my  
2 only comment there. That's it.

3 I've indicated what my order is going to be. It  
4 is intended that this will be a final decision for  
5 purposes of appeal, and I've gone through it:  
6 Motion to Dismiss for lack of standing denied, Board  
7 has authority to adopt emergency and final rules on  
8 the use of dogs to track and trail wolves in hunting  
9 pursuant Section 21 of Act 169, is being remanded to  
10 the Resources Board to make some determination  
11 within 45 days consistent with 227.12(3) whether  
12 it's going to undertake further rulemaking under the  
13 authority that I've declared. I'm continuing to  
14 declare Section NR 17.04(1) invalid to the extent it  
15 would authorize training of dogs on free-roaming  
16 wild wolves, and then the temporary injunction that  
17 was issued on August 31, 2012 is vacated. Anything  
18 further?

19 MR. HABUSH: Judge, this is Mr. Habush.

20 THE COURT: Yes.

21 MR. HABUSH: I wondered if you would  
22 dispossess the DNR and some people in the public  
23 that interpret your ruling as an implicit  
24 endorsement of using dogs to hunt wolves without  
25 reasonable restrictions to avoid encounters, because

1           that's the PR message that came out from the DNR  
2           after your last decision where people are told that  
3           because you did lift the injunction on using dogs to  
4           hunt, and I understand you felt the season was over,  
5           but it's being used as an attempt to suggest that  
6           you, by not talking about hunting dogs with  
7           reasonable restrictions, in effect, are saying it's  
8           okay to use dogs to hunt wolves without restrictions  
9           to avoid dangerous encounters, and I wondered if you  
10          would at least dispossess the DNR of that suggestion  
11          that that's what you feel.

12                         THE COURT: I think we say "disabuse," not  
13          "dispossess." But let me say this: Since I've had  
14          this case, some number of people that know me, like  
15          neighbors, they have no compunction about telling me  
16          what they think about my decision. And people are  
17          of the view that the Judge is making some kind of  
18          endorsement of this practice or that practice, and  
19          all I can say is I've tried to say this throughout  
20          these proceedings: My job is not the third vote on  
21          matters of policy. My job is limited to what's  
22          legal and what's not legal.

23                         And I have only attempted, in my decision, to  
24          evaluate what the agency has done from a matter law;  
25          not is it good policy or is it desirable or would I

1 endorse it or would I ever let a dog out doing those  
2 things. None of that is my decision. So I don't  
3 know if that answers your request, Mr. Habush, but I  
4 think that's the extent to which I want to say it.

5 I just want to reiterate and it's just really  
6 hard to -- lawyers understand this, but it's almost  
7 impossible to get anybody else to really bite on  
8 this: A judge's job is to be impartial and decide  
9 cases based on the law, evidence and reason and that  
10 alone. I tried my hardest in this case to do that.

11 And I also will say, aside from this modification  
12 on the 227.12(3), it has not, since I issued my  
13 decision, ever occurred to me that my ruling was  
14 incorrect. This continues to be my honest call of  
15 the case. I'm just like an umpire. I'm calling the  
16 balls and I'm calling the strikes, and I'm just  
17 doing it the best I can. I'm not saying I like this  
18 team or that team, this hitter or that pitcher. I'm  
19 just calling them the way I see them.

20 If that's what you need, Mr. Habush, that's what  
21 I can give you. Beyond that, I'm going to cut it.

22 MR. SINDERBRAND: Thank you, your Honor.

23 THE COURT: Anything else?

24 MR. DAWSON: Your Honor, one last thing.

25 With regard to your remand order, I'm informed by

1           counsel for DNR, who might explain, that DNR may  
2           have already complied with it. Are you interested  
3           in that information?

4                        THE COURT: I'm not asking for anybody to  
5           come back to court on any issue. If it happens, you  
6           do, but I'm saying, within 45 days, do with it  
7           what's appropriate under 227.12(3). If you did it  
8           yesterday, then probably you've complied with my  
9           order I would think.

10                    I'm going to let them look at what you did, and  
11           I'll let -- "them" being the plaintiffs, you guys  
12           that can't see me pointing. I'll let the plaintiffs  
13           tell me if there was some deficiency. I just wanted  
14           to say I don't want to see this case dragged on  
15           further in circuit court.

16                    I really enjoyed working with you all. It's been  
17           an interesting case. It's been an interesting  
18           problem of review of an administrative agency, but  
19           at some point you want to let the parties move on,  
20           whether it be political or appeal or whatever or  
21           rulemaking even. Whatever they're going to do, I  
22           want to let them do their thing, and I think I've  
23           done what I can do in this case.

24                    So as I said to the plaintiffs, had I had a  
25           cleaner record, I probably wouldn't do the remand



1 because I think, on September 26th, a lot of the  
2 considerations and the matters discussed will  
3 probably pass the test of reasonableness, which is  
4 basically our test at this juncture. It's quite  
5 differential when we're talking about a non-rule.

6 MR. HABUSH: Judge, if the DNR does not  
7 come up with rules that impose reasonable  
8 restrictions using dogs to hunt wolves that would  
9 avoid the encounters, would the plaintiffs be able  
10 to come back into your court?

11 THE COURT: Okay. What I'm contemplating  
12 is that the Board will make a decision whether to go  
13 to further rulemaking or not. That's the 227.12(3)  
14 decision. You either do further rulemaking or you  
15 don't. If you don't make it, you have to give a  
16 reason. I don't know that it has to be the  
17 lengthiest of reasons, but you have to give some  
18 reason.

19 I'm not saying today what that reason should be,  
20 but what I am suggesting to the plaintiffs is my  
21 view is that kind of review, and these are the cases  
22 I cited to you guys from Iowa and the D.C. Circuit  
23 and the US Supreme Court, that review is perhaps the  
24 most deferential we have absent a mandamus, and, as  
25 I said, we don't have a mandamus here.

1           So if they came back and said we decided not to  
2 do a rule because we don't have the legal authority  
3 to do it, well, yes, we'd give you some relief  
4 because they missed something there.

5           MR. HABUSH: My question is what if they  
6 come back and say we don't think we need to put  
7 reasonable restrictions on using dogs to hunt wolves  
8 to avoid encounters? My question is can we then  
9 come back to the Court?

10           THE COURT: I'm not precluding you from  
11 coming back. I'm assuming they would say more than  
12 just that one sentence. They would have like a  
13 second sentence at least, "because, because." But  
14 beyond that or whatever -- there's a variety of  
15 because's. I'm not going to jump the gun and say  
16 what because's are going to work and what because's  
17 aren't, other than I gave you the example that I --  
18 again, for somebody who's not involved in this and  
19 doesn't know a heck of a lot about it, a lot of the  
20 reasons that were presented back on September 26th  
21 came across as fairly sensible. I don't want to say  
22 absolutely they would be sufficient or anything, but  
23 I'm saying they didn't -- the fact is we don't have  
24 a lot of mortality in the winter, we haven't done  
25 this before, we're going to see how it works.

1 I know this much: Had we done hunting with dogs  
2 this year, it would have been just for a few weeks  
3 with a very limited number of wolves because a lot  
4 of the wolves were taken long before we got to the  
5 dog part of it.

6 So I'm just suggesting to the plaintiffs I don't  
7 want -- obviously, I can't keep you from coming  
8 back, but I prefer you not beat it to death in this  
9 court. I've given you basically my ruling, and  
10 that's the best I can do for you, and you'll just  
11 have to try it in a different forum if it's not  
12 sufficient for you.

13 The fact is legislation did get adopted, and  
14 that's a big reality in this case. That's about all  
15 I can say to you, Mr. Habush.

16 I've certainly enjoyed having you on the case, as  
17 well as everybody else. It was an honor actually to  
18 have you here, Mr. Habush, and to this day, though,  
19 my daughter and my wife refer to me yelling at you  
20 or being mean to you. So I apologize for that.

21 MR. HABUSH: I got over it.

22 THE COURT: Okay. They didn't say it as  
23 to Ms. Hirsch, but ditto to her. Anybody else I was  
24 mean to, they deserved it. Anything else then? I'm  
25 entering this order here. Thank you. We're

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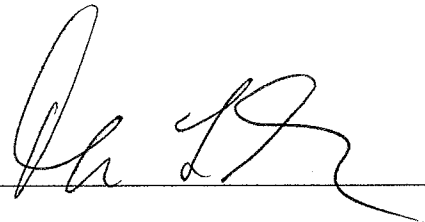
adjourned.

(Adjourned at 4:10 p.m.)

1 STATE OF WISCONSIN )  
2 ) SS  
3 COUNTY OF DANE )

4 I, THERESA L. GROVES, Official Court Reporter, do  
5 hereby certify that I took in shorthand the  
6 above-entitled proceedings held on the 16th day of  
7 January 2013, I reduced the same to a written  
8 transcript, and that it is a true and correct  
9 transcript of my notes and the whole thereof.

10 Dated at Madison, Wisconsin this 25th day of  
11 January 2013.

12  
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14 

15 Theresa L. Groves, RPR  
16 Official Court Reporter

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