

**MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS  
CONTESTED CASE NO. 84-2001-30915**

---

**IN THE MATTER OF THE MINNESOTA  
DEPARTMENT OF NATURAL  
RESOURCES SPECIAL PERMIT NO.  
16868, DATED DECEMBER 21, 2012,  
ISSUED TO DR. LYNN ROGERS**

**DR. LYNN ROGERS'  
PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
RECOMMENDED ORDER**

**FINDINGS OF FACT**

1. Dr. Rogers began researching black bears in 1967. Rogers 2219: 7-9.
2. Dr. Rogers' research has been unique. Dr. Rogers was (a) one of the first to study the social organization of black bears,<sup>1</sup> (b) one of the first to use radio collars to study a population of bears, (c) one of the first to conduct a long-term study of bears, and (d) one of the first to study teeth that were pulled from live bears to learn age and reproductive history (which is now the standard practice). Rogers 2223: 4-2224: 5.
3. In 1993 Dr. Rogers purchased his property in Eagles Nest Township, Minnesota ("Eagles Nest"). He purchased the property based, in part, on the fact that residents of Eagles Nest had been feeding bears for years and there had been very few bear nuisance problems. Rogers 2229: 7-10; 2230: 23-2231: 22.
4. Dr. Rogers conducts his studies through an organization known as Wildlife Research Institute, or "WRI." Dr. Rogers is currently studying, among other things, the effect that feeding is having on the lives of the bears. Mansfield 2145: 16-18. He is studying whether

---

<sup>1</sup> All references to "bears" herein refer to "black bears" unless otherwise indicated.

the feeding changes the bears' territory sizes, travels, diet, social organization, reproduction, cub survival, and hibernation. Rogers 2231: 16-22.

5. Sue Mansfield was a data analyst for 20 years. Mansfield 2050: 19-23. She began working with Dr. Rogers in 2001. Mansfield 2049: 3-7.

6. When Mansfield began working with Dr. Rogers, WRI had been collecting data on bear behavior, food choices, and habitat. Mansfield 2051: 24-2052: 3.

7. To interpret relationships among bears, one must know their kinship. Mansfield 2261: 14-17. Therefore, Dr. Rogers is studying a "bear clan." A "clan" is a group of bears that are related. The matriarch of the clan that Dr. Rogers is studying is known as "Shadow," a 27-year-old bear. Mansfield 2056: 13-25; 2057: 4-5.

8. Bears have cubs once every two years. Male cubs eventually move away from their mothers. Therefore, Dr. Rogers' study focuses on female bears that do not disperse. Mansfield 2064: 4-2065: 1.

9. A study of related animals over time is referred to as a "longitudinal study." Longitudinal studies take time because they focus on generations of animals. Mansfield 2064: 18-20. Therefore, the researcher has to wait until new generations are born to study how mothers and young interact, and how their territories are affected. Rogers 2223: 24-2224:2

**Dr. Rogers has had Permits from the DNR,  
which have Allowed him to Place Radio Collars on Bears  
and use Video Cameras to Film Bear Dens.**

10. Dr. Rogers' study involves putting radio collars on bears so that Dr. Rogers may track the bears. Rogers 2231: 23-2232: 4.

11. Since 1999, Dr. Rogers has obtained annual permits from the Minnesota Department of Natural Resources ("DNR"). Ex. 158. The permits have also allowed Dr. Rogers

to place radio collars on a certain number of bears. The permits have allowed Dr. Rogers to place video cameras at the entrance of bear dens. The cameras are referred to as “den cams.” Rogers 2231: 23-2232: 4.

12. Prior to 1999, Dr. Rogers used tranquilizers to subdue a bear before putting a radio collar on the bear. Rogers 2232: 5-10.

13. However, tranquilizers affect the bear’s biology. Wood 1739: 16-1741: 25.

14. There are hazards to trapping and tranquilizing bears. Rogers 2233: 10-2234: 6.

15. Bears have been killed with tranquilizers. Burghardt 1960: 13-25. Regardless of the type of tranquilizer that is used, there is a risk that the tranquilizer will kill the bear. Rogers 2234: 1-14.

16. The Bear known as “Solo” died from a tranquilizer administered by the Minnesota DNR. James 1923: 13-1924: 13.

17. Dr. Thomas Wood<sup>2</sup> observed Dr. Rogers’ work in the field.

18. Wood believes that there is value in studying animals without using drugs (Wood 1714: 14-1715: 24; 1717: 2-8), and what Dr. Rogers does without drugs is impressive. Wood 1720: 11-1721: 15.

19. In 1999, Dr. Rogers began placing radio collars on bears without the use of tranquilizers. Instead of using tranquilizers, Dr. Rogers establishes a trusting relationship with a bear and that relationship allows Dr. Rogers to place a radio collar on the bear without the use of tranquilizers. Rogers 2232: 11-2233: 6.

---

<sup>2</sup> Dr. Wood has his Ph.D. in environmental science and public policy and currently works as an associate professor at George Mason University, specializing in the field of conservation biology. He has also performed research for the Smithsonian National Zoo. His research includes bear management work at Yosemite National Park. Wood 1709:15–1712:9.

20. The DNR concedes that it is scientifically important to study bears using radio collars. Garshelis 1215: 15-19.

### **The Collaring Process**

21. To collar a bear, the bear is distracted, and the collar is slipped around its neck. Mansfield 2113: 5-2114: 8.

22. There are categories of collared bears that are based upon the bears' personalities. A bear in "category one" allows a collar to be put on at Dr. Rogers' field station, but will not allow Dr. Rogers or Mansfield to be in close proximity to it in the forest. A bear in "category two" is a bear that will allow Dr. Rogers and Mansfield to approach it in the forest, but will not allow Dr. Rogers or Mansfield to "follow" it. A bear in "category three" is a bear that allows Dr. Rogers and Mansfield to follow it in the forest. Mansfield 2054: 19-2055: 15; Rogers 2234: 21-2236: 13.

23. Not every bear will allow a radio collar to be placed on it. Mansfield 2082: 1-4.

24. Bears that are naturally more trusting will accept a collar. Rogers 2232: 11-2233: 6.

25. The bear known as "Hope" is an example of a bear that would not let Dr. Rogers or Mansfield place a collar on her. Mansfield 2135: 24-2136: 5.

### **Dr. Rogers is Able to Follow or "Walk" With a Small Number of Collared Bears**

26. As stated above, there is a category of collared bears that will allow Dr. Rogers and Mansfield to follow or "walk" with them, in the forest. By walking with the bear, Dr. Rogers and Mansfield are able to closely observe and study the bears. Rogers 2241: 17-2242: 12.

27. Dr. Rogers testified that walking with bears allows him to “really study bears” because “you have to see them, and you have to be with a bear that will ignore you.” He testified about walking with bears as follows:

[t]he bear just gets habituated to you, which means they learn to ignore you. They don't think of you as a friend. They have no desire to be near you unless you have an introductory handful of food to begin a walk. But you're not an enemy, either, and you're not a competitor, but you're not a significant food-giver. You're there. You're inconsequential, more or less. So you can sneeze, cough, rustle bushes, whatever. They know it's you. They don't pay attention.

If you -- if you fall behind when the bear's moving through the woods, then they're not sure it's you. Then they become nervous. Then they're looking. They want you right by them where they know where you are so they can ignore you, and their focus is on the tiny sounds in the distance. So that's -- that's how we do it.

Rogers 2241: 17-2242: 12.

28. Walking with bears over the course of many years provides valuable data. Dr. Rogers testified about walking with the bear known as “June” as follows:

every year we got better and better data from June because we had history. When we'd see her in a location, we knew the whole history of . . . other walks. When she'd use that habitat, how it varies with changes in natural food supply, and her relations with her neighbors, because sometimes we'd see little altercations, chases or whatever.

Rogers 2247: 3-8.

29. The ability to connect observational data with the kinship data Dr. Rogers has collected over the years is unique. Dr. Rogers testified about data gathered relating to “June” as follows:

We had enough data on the bears to have the kinship worked out between her and all of her neighbors, help the interpretation. There is no other study that comes close to anything like this in the world.

Rogers 2247: 9-13.

30. Rogers' work walking with and closely studying bears has been compared to the work of Dr. Jane Goodall.<sup>3</sup> Ex. 36; Rogers 2221: 14-2223: 3.

31. It is not easy for Dr. Rogers or Mansfield to find a bear that they are able to walk with.<sup>4</sup> Mansfield 2053: 18-19; 2054: 19-21.

32. Dr. Rogers has interacted with only two "category-three" bears. One of those bears ("June") was killed last year by a hunter. Mansfield 2055: 16-24; Rogers 2240: 20-2241: 11.

33. A bear needs to have a particular temperament to tolerate a person being close to it. Mansfield 2054: 4-7.

34. Even when Dr. Rogers and Mansfield find a bear that they can walk with, they do not interact with that bear on a frequent basis. From 2009-2011, Mansfield walked with "June" once every other week. In 2013, Mansfield walked with "June" only once. Mansfield 2210: 16-24.

**Dr. Rogers and Mansfield Place Radio Collars on Bears  
That Have Been "Habituated"**

35. Habituation is the waning of a response to a neutral stimulus. Rogers 2237: 19-20. With respect to a bear and a person, habituation results in the bear ignoring the person. Garshelis 1219: 23-1220: 4.

36. Habituation is a normal response of animals. It is not harmful or helpful. Rogers 2237: 18-24.

---

<sup>3</sup> Dr. Goodall sent a letter to Governor Mark Dayton supporting the renewal of Dr. Rogers' permit. Ex. 213; Rogers 2273: 7-15.

<sup>4</sup> Mansfield's first attempt to walk with a bear was not successful. Mansfield 2057: 11-23.

37. Some bears are more quickly habituated than others. This is based upon the bear's personality. Bears that are more quickly habituated are more likely to accept a collar. Rogers 2237: 22-2238: 2.

38. A bear can be habituated (become tolerant of people) by being in close proximity to people, and by the use of food. Garshelis: 1220: 5-8.

39. For example, Bears can be habituated by putting food in a resident's backyard. Landwehr 69: 2-6.

40. One does not need a permit to feed a bear, hand-feed a bear, or habituate a bear. Those are all legal activities in the State of Minnesota. Boggess 1447: 25-1448: 10.

### **The DNR Provides Food to Bears**

41. "Diversionary feeding" is providing food for bears to keep them from feeding somewhere else. Garshelis 1218: 8-13.

42. The DNR believes that diversionary feeding does not necessarily compromise public safety. Garshelis 1218: 14-21.

43. "Recreational feeding" is feeding bears to observe them. The DNR believes that recreational feeding does not necessarily compromise public safety. Garshelis 1218: 25-1219: 12.

44. "Supplemental feeding" is an umbrella category – it is food given to bears for different reasons. The DNR believes that supplemental feeding does not necessarily create a public safety issue. Garshelis 1219: 13-22.

45. The DNR regularly uses food in its research regarding bears.

46. The DNR set up "hair snares" at 120 locations in Northern Minnesota. The snares were baited with 1500 pounds of bacon. Garshelis 1216: 8-13.

47. The DNR also used honey scent and 80 gallons of fast food cooking grease at the hair snare locations. Garshelis 1216: 14-1217: 7.

48. The DNR also sets bait routes. Bait routes include 50 bait stations along a 25 mile route. The DNR used 50 pounds of bacon at these stations. Garshelis 1217: 8-16.

49. The DNR had a Tetracycline project pursuant to which it set up 3000 stations with a pound of bacon at each station. The project occurred over four years and used 12,000 pounds of bacon. Garshelis 1217: 24-1218: 7.

50. Dr. Garshelis testified that he performed a study of habituated bears at Camp Ripley that involved Dr. Garshelis feeding the bears items such as chocolate covered donuts. Dr. Garshelis also testified that he was able to “walk” with the Camp Ripley bears, which provided valuable information. Garshelis 1220: 9-1224: 4.

#### **Bears are Fed at the Vince Shute Wildlife Sanctuary**

51. The Vince Shute Wildlife Sanctuary is located west of Orr, Minnesota, in northwest St. Louis County. Rusch 567: 11-19

52. Bears are fed at the Vince Shute Wildlife Sanctuary. Garshelis 1231: 11-21.

53. The DNR believes that the bear feeding at Vince Shute Wildlife Sanctuary habituates 100 bears. Garshelis 1232: 6-9.

54. The DNR believes that the feeding and habituation of bears at the Vince Shute Wildlife Sanctuary does not cause a public safety issue. Garshelis 1232: 10-1233: 1.

55. Bears can travel back and forth between Eagles Nest and the Vince Shute Wildlife Sanctuary. Garshelis 1231: 20-1232: 2; 1233: 10-12.



### **Residents of Eagles Nest Township Feed Bears**

56. Residents of Eagles Nest have been feeding bears for many years. Residents began feeding bears before Rogers moved to Eagles Nest. Garshelis 1230: 19-1231: 2.

57. The DNR does not know how many residents in the Eagles Nest area feed bears. Garshelis 1231: 7-10; Cornicelli 1382: 14-16.

58. The DNR has never investigated how many residents feed bears in the Eagles Nest area. Cornicelli 1382: 17-20.

59. WRI is one feeding site out of ten to fifteen other resident feeding sites in the Eagles Nest area. Rogers 2242: 17-19.

60. The DNR has not taken any steps to prohibit the feeding of bears in Eagles Nest or elsewhere in Minnesota. Cornicelli 1390: 19-21.

### **Some of Dr. Rogers' Study Bears Were Not Habituated by Dr. Rogers**

61. Bears have been habituated by residents other than Dr. Rogers and Mansfield. Rogers 2242: 13-19; Mansfield 2061: 5-14.

62. Dr. Rogers and Mansfield did not habituate the study bear known as "June." Rogers 2239: 23-2240: 8; Mansfield 2060: 4-7.

63. Eagles Nest resident Charley Meyer habituated the bear known as "June." Mansfield 2060: 8-15; Meyer 1608:15-18.

64. Dr. Rogers has a photograph of "June" interacting with children before Dr. Rogers began interacting with "June." Rogers 2242: 23-2243: 7.

65. "June" preferred residents' feeding sites over WRI's feeding site. Rogers 2240: 9-19.

66. Dr. Rogers was able to place a collar on June the first time he interacted with her. Rogers 2236: 6-10.

67. The study bear known as “Solo” was also habituated by an Eagles Nest resident. Urban 434: 4-16.

### **Dr. Rogers’ Data Collection**

68. In 2009, Dr. Rogers began using advanced GPS tracking technology. The technology allows Dr. Rogers and Mansfield to monitor a collared bear’s location from their computers, and collect more information about how the bears are interacting with their habitat. Mansfield 2073: 3-19; 2074: 11-15; Rogers 2247: 20-2248: 3.

69. Exhibits 191, 192, 193, 194 and 195 are examples of GPS data location records. The GPS data shows where bear territories overlap and where the territories are different. Because Dr. Rogers and Mansfield know the relationship of the bears to each other, the collection of GPS data is used to study how the territories of mother and daughter bears change and interact. In addition, the data is used to study how the same bear’s territory has changed over time. Mansfield 2085: 4-2086: 12; 2087: 17-2089: 15.

70. Exhibit 193 is an example of an isopleth analysis using the GPS data. An isopleth uses an algorithm to analyze the GPS data. The analysis shows the primary territory for each bear, and the relationship of those territories to each other. Mansfield 2088: 16-2090: 3.

71. Exhibit 194 is an example of an analysis of one bear’s location over the course of one year. Mansfield 2090: 4-2091: 6.

72. Exhibit 195 is an example of an analysis of GPS data that shows the difference in territory size for females in years when they had cubs and years when they did not have cubs. Mansfield 2091: 10-18.

73. The GPS data that Dr. Rogers collects is “extremely useful” and the long-term nature of the data and ability to map the mothers and cubs over the years is unique. Burghardt 1970: 9-16.

74. In 2009, WRI obtained new technology to record weight data. Mansfield 2075: 5-17.

75. Weight data is used to show changes in weight over the course of the year, and changes in weight of the same bear over several years. It can show the differences in bear weights in years when there is good natural food and years when there is poor natural food. It can also be used to show the difference in weight gain between pregnant females and females with cubs. Mansfield 2083: 17-2084: 3.

76. Shirley Starks is a computer scientist who works in the research and development branch of Sandia National Laboratories. Starks 1829: 20-1830: 10. Starks writes software programs to analyze large location data sets of GPS coordinates. Starks 1830: 19-24; 1832: 1-6.

77. Starks does work for the Department of Homeland Security. Starks 1831: 2-6. Starks provides the Department of Homeland Security with the analysis of the data, and the Department relies upon that analysis. Starks 1832: 12-21.

78. Starks wrote a program for WRI’s weight data. The program collects all of the information collected from the scale, including weight information and images from the camera connected to the scale, and automatically puts the information into a spreadsheet. The spreadsheet links to the images of the bear that corresponds to a given weight, which allows Dr. Rogers or Mansfield to quickly identify the bear that is being weighed. Starks 1834: 7-1835: 11; 1843: 4-9.

79. Exhibit 198 is an example of weight data records. Mansfield 2084: 6-16. It shows data that is organized using the program Starks created. The program allows an analysis of the data by gender and age, and over time. Starks 1835: 20-1836: 3; 1837: 5-11.

80. Starks is currently working on a program for WRI's GPS data. That program will use location data to determine the location of bear beds by analyzing when a bear stayed in the same location for a period of time. Starks has developed the software that will analyze the data to determine possible bear bed locations. Starks 1837: 12-1838: 4; 1843: 23-1844: 3.

81. Working with the GPS data collected by Dr. Rogers and Mansfield is not a skill that a software specialist would commonly have. Starks 1849: 1-4. The program Starks is writing for the GPS data is more complicated than what is available on the market. Starks 1852: 20-1853: 13.

### **Dr. Rogers Uses Den Cams**

82. In the fall of 2009, WRI installed a den cam with live video streaming. Mansfield 2076: 16-21; 2077: 5-7.

83. Den cams provide a valuable form of education. Wood 1751: 22-1752: 5; Smith 1936: 1-16; Cornicelli 1401: 25-1402: 2; Garshelis 1233: 20-22; Rogers 2264: 17-19. Dr. Thomas Smith<sup>5</sup> testified regarding the value of den cams:

The more that we expose the public to these animals' lives . . . we can promote conservation to a public that's informed, and I think most everyone in wildlife understands that to be a basic principle. You've got to bring the public along or it doesn't matter how good your biology is, you got to have them on board.

Smith 1936: 1-16

---

<sup>5</sup> Dr. Smith's background is described in paragraph 135.

84. More than 500 schools viewed the den cams when WRI was able to live stream (prior to the winter of 2013-14). Rogers 2265: 14-16.<sup>6</sup>

85. Exhibit 203 is a list of individuals and organizations that wanted to use den cams in classrooms in the winter of 2013-14. Rogers 2265: 1-6.

86. One teacher wrote: “Having these feeds to watch really helps children understand what it means to hibernate. We watched Lily last year from January until spring. The children got to see her during hibernation, and they watched the cubs as they grew. A definite learning experience for kids and teachers alike.” Ex. 203; Rogers 2266: 1-25.

87. Den cams also have tremendous research value. Smith 1934: 19-1935: 25.

88. The den cams provide unique data because they record denning bears in the wild. 1938: 4-13. The fact that the den cams record bears in a natural setting is significant because “you’re allowing the animals to choose where they’re denning,” and “you’re dealing with the natural variation . . . [and] all kinds of features that in a laboratory or captive situation . . . you’re going to miss.” Burghardt 1969: 22-1970: 5.

89. The den cams provide intriguing and important information in great detail regarding the behavior of the bears in the den. The den cam footage that Dr. Rogers has collected provides rich behavioral information that can be analyzed. Burghardt 1967: 7-1968: 16.

90. Dr. Gordon Burghardt<sup>7</sup> testified that he intends to use the den cam footage collected by Dr. Rogers to do a systematic analysis of play behavior in the den. He characterized

---

<sup>6</sup> In connection with this proceeding, the DNR refused to allow Dr. Rogers to stream den cam footage. The DNR has stated that it is concerned that den cams cause the public to become emotionally attached to bears. Landwehr 127: 3-10.

<sup>7</sup> Dr. Burghardt’s background is described in paragraphs 138-39.

the research as “really exciting.” He has determined that the den cam footage is appropriate for analysis. Burghardt 1968: 8-1969: 3.

91. WRI is studying things that have not been studied before. Rogers 2261: 23-25; 2247: 9-19; Mansfield 2119: 4-18. In summary, WRI has a unique set of research data. Mansfield 2097: 6-8.<sup>8</sup>

### **North American Bear Center**

92. Dr. Rogers’ permits have been for “research and education.” Ex. 158. Education of the public is important with respect to animals with reputations like bears or wolves. Survival of these animals depends on human attitudes. Rogers 2263: 20-24.

93. Dr. Rogers opened the North American Bear Center (“NABC”) in 2007. Mansfield 2066: 13-15.

94. The NABC is similar to a museum. It has 60 television screens playing videos continuously. There are exhibits on different aspects of bear life, including courtship, mating, birth of cubs and care of cubs. Mansfield 2066: 16-2067: 2; Ex. 182 (picture of exhibit at Northern American Bear Center). Mansfield 2268: 10-22.

95. Dr. Rogers’ research materials are used in the NABC. Mansfield 2172: 7-11.

96. The DNR agrees that the NABC creates the opportunity for public education regarding bears. Garshelis 1233: 13-16.

---

<sup>8</sup> It is clear from the evidence that Dr. Rogers and Mansfield are performing scientific research. Based on the DNR’s review of a portion of Dr. Rogers’ data, the DNR asserts that Dr. Rogers has not adequately organized or analyzed his data. However, the DNR has never imposed a requirement that Dr. Rogers organize or analyze his data in a specific fashion. Moreover, the DNR did not deny Dr. Rogers’ permit based on how Dr. Rogers’ data is organized.

97. Dr. Burghardt testified that the NABC is a “first-rate facility” that incorporates Dr. Rogers’ research to educate the public. He further testified that the NABC is:

a great meshing between research and education for the public because the public needs to know about the animals and their behavior, and there’s so much misinformation out there that I think this is a great part of the effort that has been done.

Burghardt 1965: 20-1966: 12.

### **Documentaries**

98. There have been 13 documentaries made about WRI’s work since 2008. The documentaries have been viewed by between 100 and 250 million people. Rogers 2247: 20-2248: 3; Rogers 2270: 8-15.

99. The documentaries have been produced by the BBC and have aired on Animal Planet, National Geographic Wild, PBS and the Discovery Channel. Rogers 2270: 18-24.

### **Field Study Course**

100. Dr. Rogers offers a Field Study Course during the summer. The courses are taught by Dr. Rogers and Sue Mansfield. Mansfield 2067:6-14.

101. Judge Sidney Stein attended the bear course in 2011, 2012 and 2013. Stein 1510: 24-1511: 4.

102. Judge Stein described that students were able to:

- observe bears through the window (Stein 1515: 1-6);
- listen to lectures by Dr. Rogers (Stein 1515: 12-14);
- listen to lectures by Sue Mansfield (Stein 1516: 15-17);
- watch slide shows (Stein 1515: 13-14);
- visit a bear den (without a bear) (Stein 1516: 11-15);
- look for bear “signs” in the forest (Stein 1516: 18-1517: 11);

- analyze bear scat (Stein 1517: 12-18);
- look for a bear in the forest with Dr. Rogers (Stein 1517: 21-1518: 7); and
- tour the North American Bear Center with Dr. Rogers (Stein 1519: 10-1520: 7).

103. Judge Stein never felt in danger, and never saw anyone injured. Stein 1526: 8-15.

104. Judge Stein believed the Field Study Course was very worthwhile. Stein 1526: 16-18.

105. Shirley Starks testified that the Field Study Course was one of best experiences in her life. Starks 1833: 6-18.

106. Roberta Sonnino testified that the Field Study Course was a fabulous experience. Sonnino 1651: 6-13.

107. Sharon Thompson testified that the field Study Course was “an experience of a lifetime.” Thompson Depo. (Ex. 837) 8: 11-14.

108. Prior to 2012, students in the field study course were allowed to hand-feed bears and closely interact with bears. In February 2012, the DNR put a condition in Dr. Rogers’ permit regarding hand-feeding because the DNR was concerned about individuals other than Dr. Rogers and his staff hand feeding and closely interacting with bears. Ex. 158 (Feb. 1, 2012 permit, ¶ 9); Cornicelli 1368: 18-1371: 21.

109. After February 2012, only Dr. Rogers, Mansfield and certain WRI associates were allowed to hand-feed and closely interact with bears. Ex. 158.

110. In other words, the DNR explicitly authorized Dr. Rogers, Mansfield, and certain associates to hand-feed bears. Landwehr 159: 15-25.

111. Dr. Rogers complied with the condition in his permits stating that only certain individuals may hand-feed bears. Rogers 2272: 17-22; Landwehr 160: 1-6.



112. Judge Stein testified that students in the Field Study Course did not touch or hand-feed bears in 2012 or 2013. Stein 1531: 17-1535: 8.

### **The Public Supports Dr. Rogers' Research**

113. Evidence shows that the public supports Dr. Rogers' research.

114. On December 20, 2011, the Ely City Council issued a "Resolution in Support of Wildlife Research Institute Bear Research." Ex. 216. The Resolution states:

The Ely City Council supports the Wildlife Research Institute (WRI) and North American Bear Center (NABC) in its scientific bear research and education and encourages the MN DNR and other regulating bodies to work cooperatively with the WRI and NABC and refrain from restricting the research and education except as indicated by strong scientific data.

115. In addition, on July 2, 2013, the Ely City Council issued a "Resolution Supporting Dr. Lynn Rogers' Continued Bear Research." Ex. 216. That Resolution states:

That the City Council of the City of Ely, Minnesota requests the Minnesota Department of Natural Resources reinstate Dr. Rogers's permits to Collar live Black Bears and to Continue his 46 years of Black Bear Research.

### **DR. ROGERS' SCHOLARSHIP**

116. The study of a bear clan begins slowly and takes time, because it takes years to build a large enough sample size and to collect enough observations. Bears are slow to reproduce. Additionally, some of the behaviors that Dr. Rogers studies, such as mating and family breakup, happen only once every other year. Rogers 2261:10-2262: 3.

117. Exhibit 176 contains a list of Dr. Rogers' publications, including published papers, invited talks, and other works. Rogers 2249: 21-22.

118. Exhibit 177 is a compilation of copies of the abstracts and papers from Dr. Rogers' publications list (Ex. 176) from 1999 to the present. For example, Exhibit 177 includes abstracts from three invited presentations given by Dr. Rogers in 2013. These abstracts are

summaries of Dr. Rogers' presentations, and they were published in the proceedings of the organization holding the conference or event at which the presentation was given. Rogers 2250: 1-2251: 4. Exhibit 177 also includes copies of papers published by Dr. Rogers in peer-reviewed journals since 1999.

119. Mansfield gave a presentation at the International Bear Association (IBA) Conference in the fall of 2013 based upon the research she and Dr. Rogers conduct under the permit. This presentation outlined observations of black bear denning behaviors she and Dr. Rogers have collected using den cams from 2010 to 2013. As part of the presentation, Mansfield displayed photos and video clips depicting unique behavioral observations. Ex. 179; Mansfield 2097: 19-2099: 20.

120. The IBA Conference presentation was well-received and "generated a lot of discussion," because many of the things Dr. Rogers and Mansfield have observed using den cams have not been reported before. Mansfield 2098: 11-14.

121. In June 2011 the U.S. Department of Fish & Wildlife invited Dr. Rogers (and paid his expenses) to present on the topic of diversionary feeding as a possible aid to management of polar bears. Rogers 2254: 2-6. The "Polar Bear Diversionary Feeding Workshop Report," relating to this invited presentation is included in Exhibit 177. Rogers 2253: 18-2254: 18.

122. Also included in Exhibit 177 is a peer-reviewed paper published by Dr. Rogers entitled "Fatal Disseminated Blastomycosis in Free-Ranging American Black Bear" (*Ursus americanus*). See also Ex. 48. This paper was published in 2012 in the Journal of Veterinary Diagnostic Investigation.

123. Because Dr. Rogers' methods allow him to observe bears closely, he noticed that the bear that was the subject of the blastomycosis paper was failing. Dr. Rogers was also able to

determine that the bear was very old. He collared the bear to closely monitor its location as its health failed. Dr. Rogers was then able to locate the bear shortly after its death so that it could be necropsied. It is extremely rare to be able to gather this type of data on natural death in bears. Rogers 2251: 21–2253: 8; Rogers 2248: 12-22.

124. Blastomycosis had never been reported in a black bear prior to this occasion. Rogers 2251: 21–2253: 8.

125. Also included in Exhibit 177 is a peer-reviewed article entitled “Humming in Bears,” on which Dr. Rogers was an author. This paper was published in the journal *Acta Theriologica* in 2007. It was written and published during Dr. Rogers’ current study using information from his research. Rogers 2255: 15-25.

126. In addition to the publications listed on Exhibit 176, Dr. Rogers has been an author on two recent papers. One of these recent papers is entitled “Black Bear Reactions to Venomous and Non-venomous Snakes in Eastern North America.” Dr. Rogers submitted the paper to *Ursus* in June of 2012. Ex. 813. *Ursus* did not accept the paper, but invited Dr. Rogers to revise it for future submission. Ex. 814. It was subsequently accepted for publication in the peer-reviewed journal *Ethology*. Ex. 155; Rogers 2259: 9-13. Dr. Rogers received an acceptance from *Ethology*’s editor on February 7, 2014. Rogers 2258: 14-2259: 11.

127. The journal *Ethology* is known in the field as “a very strongly peer-reviewed journal.” It is read by experts in animal behavior, and it reaches a large audience. Burghardt 1963: 17-20.

128. The Bears and Snakes paper (Ex. 155) involves research conducted by Dr. Rogers under his current study. Rogers 2259: 9-11.

129. Another recent paper authored by Dr. Rogers is entitled “Remote Cameras Reveal Undisturbed Activity of the Denning Black Bears.” Dr. Rogers initially submitted his denning behavior paper to the journal *Ursus*. Ex. 815.

130. Dr. Rogers has collected a large data set, which attracts top biologists like Gordon Burghardt and Roger Powell to collaborate with WRI on publications. Powell is the editor of the journal *Mammalogists*, and is “probably the world’s top expert in analyzing home-range data.” Rogers 2262: 24–2263: 5.

131. Dr. Rogers’ future plans include publishing all of the data he has collected. Rogers 2262: 4-12.

132. Dr. Rogers and Mansfield are currently working on several papers. Mansfield is working on a paper regarding family breakup. Mansfield 2096: 3–7. Existing literature on family breakup is “few and far between,” and the publications that exist generally document only a single occurrence. Dr. Rogers and Mansfield have a unique set of data on this topic. Mansfield 2096: 25–2097: 8.

133. Mansfield also has plans for a paper on courtship and mating behavior, which will build on the family breakup paper. Mansfield 2096: 15-24.

134. In addition, Dr. Rogers and Mansfield have a unique opportunity to observe labor and delivery in black bears through the use of den cams. Mansfield is planning a paper on labor and delivery utilizing this data. Mansfield 2097: 9-18.

### **Dr. Thomas Smith**

135. Dr. Thomas Smith is an associate professor and research wildlife biologist at Brigham Young University. For the past 22 years, Dr. Smith has been studying aspects of bear ecology, including work for the National Park Service in Alaska. Smith 1929: 9-1930: 22.

136. Dr. Smith reviewed Dr. Rogers' paper, "Remote Cameras Reveal Undisturbed Activity of the Denning Black Bears." (Ex. 151). Exhibit 151 is the version of this paper that Dr. Rogers submitted for publication in *Ursus* on December 31, 2013. Dr. Smith testified that the den cam paper consists of "top flight research." Specifically, Dr. Smith testified as follows: "I mean it's top flight research. There is no question, it's very good . . . I'm going to say that Dr. Rogers, of all people, has probably out published everybody I know in the bear community, and he knows how to write. He's very skilled at it. And this paper is what you would expect from somebody who's written 100 previous papers . . . I wish somebody in this University could write like this." Smith 1936: 17-1938: 13; 1941: 18-1942: 5.

137. Dr. Smith also reviewed Dr. Rogers' paper, "Black Bear Reactions to Venomous and Non-Venomous Snakes in Eastern North America." Ex. 152. Dr. Smith was one of the reviewers of that paper for the *Journal of Ethology*. Dr. Smith described the article as follows: "It's a joy to read. It's a masterpiece . . . Dr. Terry DeBruyn, I know him, and I know of Gordon Burghardt. So I know those three out of the author string, and they are among the best there is in the world at what they do." Smith 1938: 18-1940: 25.

### **Dr. Gordon Burghardt**

138. Dr. Gordon Burghardt is a distinguished service professor at the University of Tennessee in the Departments of Ecology and Evolution of Biology and Psychology. Burghardt 1954: 1-3.

139. Dr. Burghardt has published many articles. He has also worked as a consulting editor reviewing manuscripts for at least 50 different journals, and he has been on the editorial boards of at least 20 journals. Burghardt 1955: 6-10.

140. Dr. Burghardt has been familiar with Dr. Rogers' work for "many decades," and he has cited Dr. Rogers in his own publications. Burghardt 1959: 13-22.

141. Dr. Burghardt believes that Dr. Rogers' work—specifically the fact that Dr. Rogers is able to closely observe bears without tranquilizers—is "innovative." Burghardt 1960: 11-24.

142. Dr. Burghardt believes that it is important and valuable to gather observational data from a variety of researchers over a period of time, as Dr. Rogers has done in the Bears and Snakes paper. Burghardt 1962: 18-1963: 11.

143. In Dr. Burghardt's opinion, observational studies take more time than other types of studies to assemble data for publication. Burghardt 1998: 2-1999: 17.

144. Dr. Burghardt had a good experience working with Dr. Rogers on the Bears and Snakes paper. Burghardt 1964: 6-16.

145. Dr. Burghardt has made plans to continue collaborating with Dr. Rogers and to utilize additional data collected by Dr. Rogers in future publications. Dr. Burghardt testified that he is "anxious to get involved in future studies using the magnificent database that [Dr. Rogers] has amassed over the years." Burghardt 1964: 13-16.

146. Specifically, Dr. Burghardt has plans to use data that Dr. Rogers has collected using den cams to research play behavior. Burghardt 1968: 17-1969: 3.

### **Dr. Roberta Sonnino**

147. In addition to experts in the fields of wildlife research who are familiar with Dr. Rogers' work, Dr. Rogers called Dr. Roberta Sonnino to offer opinions on the topic of peer review and academic standards for research generally. Dr. Sonnino is a physician and Vice Dean for Faculty Affairs and Professional Development at Wayne State University. Sonnino 1642:

3-10. In this role, she works with standards for publication and scholarship on a daily basis. Sonnino 1644: 25–1645: 2.

148. There has been a shift in academia since 1990 from a focus on peer-reviewed research to more broadly defined scholarship. Sonnino 1647: 14-18.

149. Many types of research that people conduct produces information that should be disseminated beyond other experts in their particular fields of research. One of the criteria that has become important in evaluating scholarship is whether it is open to the public for critique and review. Sonnino 1648: 17-1649: 12.

150. Dr. Sonnino testified that behavioral research is unique in the ways in which it is collected and disseminated. Behavioral research is often conducted over a long period of time, and the data that is collected lends itself to a different kind of dissemination—specifically, dissemination in a more visual way. It takes a long time to collect enough behavioral data to put the results into a more conventional type of scholarship. Sonnino 1652: 13-1654: 4.

151. Dr. Sonnino testified that, even in the “publish-or-perish” world of academia, scholarship that is not published in a peer-review journal is acceptable and valued. Sonnino 1675: 5-1676: 3.

152. Academic institutions promote their professors based on scholarship, which is not limited to peer-reviewed publications. Sonnino 1699: 21-1700: 10.

153. In Dr. Sonnino’s professional opinion, the output from Dr. Rogers’ research constitutes peer-reviewed scholarship. Sonnino 1656: 2-5.

154. For example, other organizations are linking to the WRI’s website as a way to educate the public about bears, including the State of Virginia’s Department of Game and Inland Fisheries. That is a form of peer-review. Sonnino 1656: 22-1657: 20.

155. In addition, Dr. Sonnino opined that many of the ways in which Dr. Rogers disseminates information are forms of valued scholarly activity. For instance, Dr. Rogers' work developing materials for K-12 education would be valued under the current standards for scholarly activity. Sonnino 1668: 8-15.

156. The WRI's daily updates are also a form of scholarship and of peer review. Sonnino 1683: 16-17; 1656: 16-21. Dr. Rogers publishes the updates on his website, and they are "open for anybody to critique." Sonnino 1655: 8-11.

157. In Dr. Sonnino's opinion, Dr. Rogers' work meets the criteria for scholarship applicable to researchers in colleges or universities, and Dr. Rogers would meet annual review criteria for a faculty member. Sonnino 1654: 5-1655: 25.

#### **In 2008 the DNR had Dr. Rogers' Research Protocol Peer Reviewed**

158. In 2008, the DNR told Dr. Rogers that it intended to have Dr. Rogers' research protocol peer-reviewed to determine whether the protocol caused a public safety issue. Ex. 20.

159. The DNR selected Dr. Stephen Herrero and Dr. Martyn Obbard to perform the review. Both were suggested by Dr. Garshelis. Garshelis 1200: 14-17.

160. Dr. Garshelis had worked with Dr. Herrero. Garshelis 1200: 21-23.

161. Dr. Garshelis was friends with Dr. Obbard. Garshelis 1200: 24-1201: 1.

162. Dr. Rogers asked three other researchers to review his protocol.

163. Dr. Rogers asked Dr. Jane Tate to review his protocol. Dr. Tate found that there were no public safety issues. Ex. 17; Rogers 2244: 9-2245: 1.

164. Dr. Rogers asked Steve Stringham to review his protocol. Stringham found that there were no public safety issues. Ex. 18, 2245: 2-15.



165. Dr. Rogers asked Dr. Terry DeBruyn to review his protocol. Dr. DeBruyn was the head of bear management for the State of Florida, and is currently head of polar bear research for the United States Park Service. Rogers 2245: 16-2246: 16.

166. Dr. DeBruyn found that there were no public safety issues. Ex. 30; 2245: 19-2246: 6.

167. Ed Boggess, the DNR's Director of Fish and Wildlife, reviewed the Herrero and Obbard reports (only those reports). Boggess also discussed the Herrero and Obbard reports with Wildlife Research Manager Mike DonCarlos and Director Dave Schad. Boggess 1449: 13-1450: 10.

168. After considering the Herrero and Obbard reports, the DNR decided to reissue Dr. Rogers' permit. Boggess 1422: 15-17. On June 28, 2008, the DNR sent a letter to Dr. Rogers (Ex. 32) stating as follows:

... Our primary concern was whether your methodology would affect bears in a way that could jeopardize public safety. We concluded through our review that, although your methods definitely change the behavior of individual study bears, it is unlikely (but not impossible) that these behavioral changes will directly jeopardize public safety. Therefore, enclosed is a permit to continue your activities....

**In January 2011, Tom Landwehr was Appointed Commissioner of the DNR**

169. In January 2011, Tom Landwehr was appointed Commissioner of the DNR. Landwehr 43: 1-3.

170. After Landwehr became Commissioner, Dr. Rogers invited him to visit WRI's facility to observe Dr. Rogers' work. The Commissioner did not visit WRI and did not send anyone else from the DNR to visit WRI. Landwehr 113: 12-114: 23.

171. Commissioner Landwehr thought that Dr. Rogers' invitation to visit WRI was a form of "badgering." Landwehr 117: 17-118: 19.

172. When Landwehr started as Commissioner in January 2011, he had to determine whether to renew Dr. Rogers' permit. Landwehr 112: 1-8.

173. The Commissioner spoke with Boggess and determined that Dr. Rogers' permit should be issued. Landwehr 113: 2-11; Boggess 1438: 13-1440: 14.

174. Dr. Rogers requested that the DNR take the position that collared bears should be protected from hunters.

175. The DNR believed it could find a way to protect Dr. Rogers' study bears, but decided that the resulting inconvenience to hunters outweighed the benefit to science. Garshelis 1119: 2-1200: 3.

176. In March 2011, Commissioner Landwehr published an article regarding his opinion that collared bears should not be protected. Ex. 55.

177. Dennis Anderson (a reporter for the Minneapolis Star Tribune) criticized Landwehr's opinion. Ex. 58; Landwehr 119: 12-120: 2.

178. Commissioner Landwehr believed that Dr. Rogers was being a "bully" and was "badgering" the DNR. Ex. 57; Landwehr 54: 22; 116: 6-12.

179. Emails from the public caused Commissioner Landwehr to question whether Dr. Rogers' permit should be issued. Landwehr 116: 21-117: 7.

180. In July 2011, Commissioner Landwehr became aware of a bear putting its paws on a vehicle in Bear Head State Park. Landwehr 120: 8-11.

181. On August 29, 2011, Commissioner Landwehr met with Dr. Rogers. Landwehr 123: 19-124: 9.

182. The issue with the bear putting its paws on a vehicle in Bear Head State Park was resolved. Landwehr 125: 5-17.

183. Dr. Rogers responded, in writing, to concerns raised by Commissioner Landwehr. The Commissioner did not read the response. Landwehr 127: 18-128: 8.

184. At all times, when Commissioner Landwehr asked Dr. Rogers for information, Dr. Rogers responded. Landwehr 131: 10-25.

185. On November 17, 2011, the DNR sent Dr. Rogers a letter that included photos that were taken in 2008 of a bear at WRI's window and young man feeding a bear. The DNR did not believe that the photos constituted cause to deny Dr. Rogers' permit. Boggess 1441: 1-21.

186. Dr. Rogers sent the DNR an updated research plan in December 2011. Ex. 599; Landwehr 128: 18-25. The DNR did not criticize the plan or otherwise indicate that the plan was unacceptable.

187. As of February 1, 2012, the DNR believed that it did not have cause to deny Dr. Rogers' permit and, therefore, the DNR reissued the permit. Boggess 1441: 22-1442: 6; Landwehr 129: 5-15.

#### **Dr. Cornicelli's September 2012 Recommendation**

188. In September 2011, Dr. Lou Cornicelli became the DNR's Wildlife Research Manager. Cornicelli 1378: 13-15.

189. Dr. Cornicelli is not an expert on bears. Cornicelli 1379: 15-16.

190. On September 5, 2012, Dr. Cornicelli prepared a written recommendation that Dr. Rogers' permit not be renewed. Ex. 106.

191. Exhibit 109 is a second version of Dr. Cornicelli's recommendation. In that document, Dr. Cornicelli noted that even if Dr. Rogers' permit was denied, Dr. Rogers could continue habituating and following bears without a permit from the DNR.

192. Exhibit 109 also states that even if Dr. Rogers' permit is denied, any feeding problem in Eagles Nest could continue based on feeding by individuals not associated with WRI.

193. Exhibit 166 is a September 4, 2012 log of complaints that Dr. Cornicelli used to prepare his September 5, 2012 recommendation to deny Dr. Rogers' permit (Exhibit 106). Cornicelli 1385: 23-1386: 1.

194. Exhibit 166 includes 35 complaints during the period 2009 to 2013. Only two of the complaints on Exhibit 166 refer to bears that were habituated. Cornicelli 1387: 15-24.<sup>9</sup>

195. In January 2014, the DNR provided sworn answers to Dr. Rogers' Interrogatories. Ex. 217. In the Answers to Interrogatories 11 and 12, the DNR provided a list of all complaints that the DNR attributes to Dr. Rogers' study.

196. Only three of the complaints that are listed on the September 4, 2012 log (Ex. 166) appear on the list provided in the DNR's sworn Interrogatory Answers. Mansfield 2116: 8-2117: 14.

197. Ed Boggess met with Dr. Cornicelli about Dr. Cornicelli's September 2012 recommendation to deny Dr. Rogers' permit. Boggess also met with Commissioner Landwehr and Director Rivers regarding Dr. Cornicelli's recommendation. After reviewing the recommendation, the DNR concluded that it did not have cause to deny Dr. Rogers' permit. Boggess 1431: 20-1432: 8; 1442: 7-23. Therefore, the permit was reissued.

198. In July 2013, Dr. Cornicelli submitted another complaint log to the Ramsey County District Court. Ex. 8 to Ex. 595. The log contained 69 complaints that Dr. Cornicelli asserted related to Dr. Rogers' study. Cornicelli 1394: 15-21.

---

<sup>9</sup> The DNR's records indicate that there were 901 bear complaints statewide from 2009 through June 2013. Ex. 212.

199. Dr. Cornicelli's Affidavit states that he compared complaints in Eagles Nest with complaints in other areas of the state. Ex. 595. ¶ 7. However, Dr. Cornicelli testified in this case that he did not make that comparison. Cornicelli 1394: 25-1396: 10.

200. Only 13 of the complaints listed on Ex. 8 to Dr. Cornicelli's Affidavit (Ex. 595) appear on the list provided in the DNR's sworn Interrogatory Answers. Mansfield 2118: 11-2119: 3.

**After Dr. Cornicelli's Recommendation, the DNR Continued  
to Issue Permits to Dr. Rogers**

201. As of November 29, 2012, the DNR believed that it did not have cause to deny Dr. Rogers' permit. Boggess 1443: 2-5.

202. As of December 21, 2012, the DNR believed that it did not have cause to deny Dr. Rogers' permit. Boggess 1443: 6-13; Landwehr 144: 22-145: 8.

**The DNR's Decision to Deny Dr. Rogers' Permit**

203. The DNR asserts that Dr. Rogers needs a permit to collar bears and use a den cam. Landwehr 176: 12-17.

204. According to the DNR, whether the DNR should issue a permit is based upon whether a preponderance of the evidence suggests that the permit provides a reasonable benefit to the citizens of the state of Minnesota. Landwehr 48: 18-22; 109: 9-14.

205. The DNR's decision to deny the permit was made after December 21, 2012, and some "weeks or months" before June 28, 2013. Boggess 1451: 6-10; Landwehr 151: 7-10.

206. The DNR initially considered winding down Dr. Rogers' work over three years. Boggess 1451: 13 -1452: 1.

207. The DNR settled on a plan to terminate the permit in November 2013. Boggess 1452: 9-18; Landwehr 154: 24-155: 1.

208. The Commissioner spoke with a member of the Governor's staff and that person suggested that, if the DNR was concerned about public safety, the DNR should not wait until November. Boggess 1452: 19-1453: 9; Landwehr 155: 2-21.

209. In denying the permit, the DNR did not assert that Dr. Rogers violated any conditions of his permit. Landwehr 158: 3-13; Boggess 1493: 10-17.

### **The Relationship Between Dr. Rogers and DNR Staff**

210. The relationship between Dr. Rogers and DNR staff has been contentious.

211. In 1999, DNR staff did not want a permit issued to Dr. Rogers. Boggess 1444: 15-18.

212. When Dr. Cornicelli became Wildlife Research Manager in September 2011, he reviewed Dr. Rogers' file and concluded that DNR staff did not want a permit issued to Dr. Rogers in 1999. Cornicelli 1378: 17-24.

213. In 1999, Alan Garber was the Commissioner of the DNR. Commissioner Garber testified that he visited Dr. Rogers and observed Dr. Rogers' work in the field. Commissioner Garber testified that he did not see any evidence of a public safety issue.<sup>10</sup> Garber 1501: 20-1502; 16; 1503: 16-1504: 1.

214. Commissioner Garber testified that Garshelis did not want a permit issued to Dr. Rogers. Garber 1505: 20-1506: 13. Boggess also testified that he understood that Dr. Garshelis did not want a permit issued to Dr. Rogers in 1999. Boggess 1444: 19-1445: 24.

215. Commissioner Garber believed that there was a "competition" between Dr. Garshelis and Dr. Rogers. Garber 1507: 15-1509: 11.

---

<sup>10</sup> Since 1999, no one from the DNR has been to WRI to observe Dr. Rogers' work.

216. Dr. Garshelis started with DNR in 1983. Garshelis 1187: 22-23. He is the point person on bears at the DNR. Garshelis 1188: 2-5. Dr. Garshelis met Dr. Rogers in 1984. Garshelis 1188: 8-17. Dr. Garshelis felt rejected by Dr. Rogers. Garshelis 1191: 4-11.

217. Dr. Garshelis believes that Dr. Rogers has never wanted to work with him. Garshelis 1191: 16-1192: 21.

218. Dr. Garshelis and Dr. Rogers have had a difference of opinion about bear management for a long time. Cornicelli 1381: 3-12.

219. Dr. Garshelis gets angry with others in the scientific community with whom he disagrees. Garshelis 1193: 9-19.

220. Dr. Garshelis recently published an article accusing eight scientists of publishing false information on sea otters. Garshelis 1193: 20-1194: 2.

221. Dr. Garshelis told a member of the media that graduate students “don’t know Rogers is alive.” Garshelis 1195: 6-23.

222. Dr. Garshelis told a member of the media that Dr. Rogers is incapable of analyzing his own data. Garshelis 1196: 5-10.

223. At one point, Dr. Rogers corrected an inaccurate statement on the DNR’s website, which aggravated Dr. Garshelis. Garshelis 1197: 5-23.

224. Dr. Garshelis was aggravated when the DNR received emails from Dr. Rogers’ supporters. Garshelis 1208: 17-24.

225. When Dr. Rogers did not support a project that Dr. Garshelis was interested in, Dr. Garshelis published an article about Dr. Rogers that accused Dr. Rogers of misleading his supporters. The article also criticized Dr. Rogers’ supporters as being unconcerned with bears. Ex. 46; Garshelis 1208: 25-1211: 21.

226. In October 2011, Dr. Garshelis stated, in writing, that the DNR “screwed this up” when the DNR’s peer review of Dr. Rogers’ research protocol showed that there was no public safety issue. Ex. 77; Garshelis 1206: 24-1207: 10.

227. Steve Stringham reviewed Dr. Rogers’ research protocol and found no public safety issue. Dr. Garshelis testified that Stringham’s review was “garbage”. Garshelis 1201: 24-1202: 5.

228. Dr. Jane Tate reviewed Dr. Rogers’ research protocol and determined that there were no public safety issues. Dr. Garshelis testified that Tate’s review was “garbage.” Garshelis 1201: 20-23.

229. Dr. Herrero reviewed the protocol, which resulted in the permit being reissued. Dr. Garshelis testified that Dr. Herrero’s work was “bad.” Garshelis 1201: 9-12.

230. On August 12, 2012, Commissioner Landwehr received an email that included a comment from a member of the public that wanted to see Dr. Rogers “shut down.” Commissioner Landwehr responded “hopefully the momentum will continue to build.” Ex. 87; Landwehr 139: 25-140: 11. In December 2012, Commissioner Landwehr sent an email stating that the DNR was “building a case” against Dr. Rogers. Ex. 120; Landwehr 141: 23-142: 20.

**Commissioner Landwehr Gave Three Reasons for His Decision.**

231. Commissioner Landwehr believes that the question whether to issue Dr. Rogers’ permit was policy issue. Landwehr 149: 24-150: 10.

232. On June 28, 2013, Commissioner Landwehr sent a letter to Dr. Rogers (Ex. 124) that stated:

This letter serves as notice that we will not be issuing you a new bear research permit. We have extended your current permit (enclosed) until July 31 because we understand that it will take you some time to remove radio collars currently on study bears.



The reasons for this action have been articulated to you in previous letters. To summarize:

1. You have produced no peer-reviewed literature based on the permitted activities, in spite of our insistence for many years that this is a critical element of legitimate research.
2. Your habituation of bears to humans-including hand feeding and close interactions between bears and people-creates a very real public safety issue. You have stated that there are more than 50 bears in the Ely area that have been subjects of your work; this creates a large and long-term habituation issue.
3. We are aware of incidents that have been documented in various social media of extremely unprofessional behavior with research bears.

Because of these ongoing concerns, it is clear the potential benefit of published research results is greatly outweighed by our continuing concerns for public safety. You may continue to conduct bear education in the Ely area with the captive bears you maintain under your DNR game farm permit, but after July 31, 2013 your activities may no longer involve radio-collaring wild bears or disturbing, handling, or videotaping wild bears in dens.

233. The decision to deny Dr. Rogers' permit was not based upon any bear incidents between December 21, 2012 and June 28, 2013. Boggess 1443: 21-24; Landwehr 153: 22-154: 23.

234. Commissioner Landwehr testified that "unprofessional behavior" included mouth feeding, pictures of a young man feeding a bear in 2008, and a video of Dr. Rogers apparently striking a bear. Landwehr 100: 22-25; 109: 21-110: 4.

235. Commissioner Landwehr testified that the DNR did not deny Dr. Rogers' permit because of "unprofessional behavior." Landwehr 111: 2-15.

236. Prior to December 21, 2012, the DNR raised Dr. Rogers' alleged lack of peer-reviewed publications. Prior to December 21, 2012, the DNR raised issues regarding public

safety. Boggess 1443: 25-1444: 14. However, on December 21, 2013, the DNR reissued Dr. Rogers' permit.

237. In March 2011, Dr. Rogers told the DNR that he was taking publishing seriously. Ex. 60; Landwehr 133: 8-15.

238. In a letter dated January 31, 2012, Commissioner Landwehr stated that he expected Dr. Rogers to submit two articles for publication between January and November 2012. Ex. 89; Landwehr 133: 24-134: 16; 135: 11-15.

239. As of June 28, 2013, Commissioner Landwehr did not know whether Dr. Rogers had submitted two articles during the period January-November, 2012. Landwehr 135: 15-19.

240. Dr. Rogers did submit two articles for publication during the period January to November 2012. An article was published in the Journal of Veterinary Diagnostic Investigations. Ex. 48. The second article was submitted to the journal Ursus in June 2012. Ex. 813. That article was subsequently accepted for publication by the journal Ethology. Exs. 152, 155; Burghardt 1961: 25-1962: 2.

241. The DNR did not reference den cams in its June 28, 2013 letter.<sup>11</sup>

242. When Commissioner Landwehr sent the June 28, 2013 letter, he did not know about the DNR's 2008 peer review of Dr. Rogers' research protocol. Landwehr 155: 22-156: 9.

243. In Commissioner Landwehr's June 28, 2013 letter, he referred to a "weighing" process. Landwehr 157: 14-20. Commissioner Landwehr stated that Dr. Rogers' publications could have "outweighed" the DNR's concerns for public safety. Ex. 124.

---

<sup>11</sup> The DNR introduced evidence that, on one occasion, a member of the public found a den cam. However, the DNR conceded that the fact that a person found a den cam was not a reason Dr. Rogers' permit was denied. Cornicelli 1402: 20-1403: 8.

244. Commissioner Landwehr testified that the DNR could have included different conditions in Dr. Rogers' permit rather than deny the permit. Landwehr 166: 13-24.

245. Commissioner Landwehr did not consult with Dr. Garshelis about whether the DNR should deny Dr. Rogers' permit. Landwehr 105: 19-24.

246. Dr. Garshelis testified that Dr. Rogers' working with bears does not cause a public safety issue. Garshelis 1239: 21-23.

247. Dr. Garshelis testified that feeding research bears does not cause a public safety issue. Garshelis 1239: 16-20.

248. Dr. Garshelis testified that there is a legitimate basis for Dr. Rogers to feed bears. Garshelis 1238: 16-1239: 15.

249. Dr. Garshelis testified that he believes that it is not what Dr. Rogers does, but what Dr. Rogers tells the public that is "dangerous." Garshelis 1236: 21-1237: 24.

#### **The DNR's Press Releases**

250. After sending the June 28, 2013 letter, the DNR was unhappy with media that appeared to be sympathetic to Dr. Rogers. The DNR believed that Marshall Helmberger of the Timberjay newspaper favored Dr. Rogers. Cornicelli 1407: 20-1409: 18.

251. Dr. Cornicelli made a statement in the press that "Bears are breaking into cabins, sticking their heads in cars, and behaving in ways wild bears would not otherwise do." Cornicelli 1403: 21-1405: 6.

252. There is no evidence that any of Dr. Rogers' study bears broke into cabins. Landwehr 167: 21-23; Garshelis 1240: 3-19.

253. There was only one incident where a bear allegedly put its head near or in a vehicle. Landwehr 168: 12-15.

254. Based on press coverage, Commissioner Landwehr concluded that Dr. Rogers' reputation was "taking a beating." Landwehr 166: 8-12

## **PUBLIC SAFETY ISSUES**

### **Black Bears are Not Inherently Dangerous**

255. Bears have different personalities. Garshelis 1211: 22-25.
256. Bears are smart and inquisitive. Garshelis 1212: 1-3.
257. Bears resemble humans in character and physicality. Garshelis 1212: 4-6.
258. Black bears are one of the least aggressive bears in the world. Garshelis 1212: 10-12.
259. Bears may bluff charge, huff, paw the ground, and pop their jaws, but attacks are very rare. Garshelis 1212: 13-15.
260. Black Bears almost always back down in human encounters. Garshelis 1212: 16-18.
261. Black bears are not inherently dangerous. Garshelis 1211: 7-9; Rusch 623: 10-12.
262. Garshelis has been tranquilizing bears for 30 years and has never been attacked. Garshelis 1212: 19-25.
263. There are only five recorded instances of bear attacks in Minnesota that required overnight hospitalization. Garshelis 1213: 22-25. Those instances did not involve Dr. Rogers' research bears. Garshelis 1214: 1-4.
264. During the 1980s and 1990s there was an average of 1700 nuisance bear complaints per year in Minnesota. Now, there are fewer than 600 complaints per year. Garshelis 1214: 23-1215: 2.

265. During the 1980s and 1990s, 150 nuisance bears were killed in Minnesota each year. Today, 20 are killed each year. Garshelis 1215: 3-8.

### **Testimony from Residents of the Eagles Nest Area**

266. There are approximately 600 property owners in Eagles Nest Township. Humay 1772: 15-23; 1820: 19-1821: 15.

#### **Dan Humay**

267. Dan Humay has lived in Eagles Nest since 1993. Humay 1764: 16-20.

268. Humay was on Eagles Nest's Township Board from 2004 through 2012. He was Chairman of the Board for 6 years. Humay 1765: 6-1766: 9.

269. The Eagles Nest Township Board formed a Bear Committee in 2007. The Bear Committee was made up of 15 people with diverse views about bears. Humay 1768: 4-1769: 7.

270. The Bear Committee met 10-12 times. Humay 1770: 11-22.

271. The Bear Committee issued its Report on December 7, 2007. Ex. 16. The Report states in part, "The majority of members serving on the [Bear Committee] believe the work that is being done by WRI is important and that it should continue..." Ex. 16, p. 9. The Report also states that "It seems logical for the DNR and the WRI to cooperate with each other ..." Id. The Bear Committee sent the Report to all of Eagles Nest's residents and to the DNR. The DNR did not respond to the report. Humay 1772: 24-1773: 10.

272. In connection with the Bear Committee's work, a telephone help line was established. The help line was intended to provide a resource for those with concerns about black bears. Humay was one of the four individuals designated to answer calls. Humay received two calls from 2008 to the present. Humay 1773: 24-1775: 10. Ron James, another person

designated to answer calls, received one call from 2008 to the present. James 1917: 2-21. None of the calls involved threats to public safety.

273. Humay sees wolves and bears on his property. He noted that he did not see many bears last summer (the summer of 2013) because it was a good natural food year. Humay 1778: 5-18.

274. Humay testified that he has children visit his property and that he does not have safety concerns regarding bears. Humay 1780: 14-1781: 3.

275. Humay has not changed his lifestyle because of bears. Humay 1781: 19-1782: 4.

276. Humay has never had a situation where he tried to scare away a bear but could not do so. Humay 1780: 10-13.

277. Humay believes that Eagles Nest residents do not need to be concerned about bears. Humay 1797: 5-24.

278. Humay did not believe that there was a bear problem in Eagles Nest in December 2007 when the Bear Committee issued its Report, and he does not believe there is a bear problem in Eagles Nest today. Humay 1775: 11-17.

### **Lisa Hutchinson**

279. Lisa Hutchinson is a Special Education paraprofessional at New Prague Middle School. Hutchinson 1874: 7-8.

280. Hutchinson bought her property in Eagles Nest in 2004. Hutchinson 1874: 16-25.

281. Hutchinson has two children, ages 14 and 16. Hutchinson 1875: 17-21.

282. Hutchinson's property in Eagles Nest backs up to WRI's property. Hutchinson's cabin is approximately 1000 feet from WRI's cabin. Hutchinson 1876: 8-19.

283. Last year (the summer of 2013), Hutchinson saw only two bears because the food in the forest was good. Hutchinson 1876: 24-1877: 10.

284. Hutchinson sometimes sees bears while she is running. On those occasions, the bears run away from her. Hutchinson 1877: 15-18.

285. Hutchinson does not have any problems with bears. Hutchinson 1879: 4-7.

286. Hutchinson does not have safety concerns regarding bears. Hutchinson 1878: 12-22.

### **Betsy Flaten**

287. Betsy Flaten has lived in Eagles Next since 1999. Flaten 1881: 9-22.

288. Flaten's grandchildren visit her cabin in the summer. Flaten 1882: 10-1883: 2.

289. Last summer (the summer of 2013), Flaten did not see many bears. Flaten 1883: 16-23.

290. Flaten does not have safety concerns regarding black bears. Flaten 1884: 13-23.

291. Flaten is not concerned with WRI's research. Flaten 1887: 16-1888: 7.

### **Darnell Stage**

292. Darnell Stage has lived in Eagles Nest since 1993. Stage 1945: 1-8.

293. Stage's cabin is approximately 100 yards from WRI's cabin. Stage 1946: 9-19.

294. Stage sees fewer bears today than he did in 1993. Stage 1947: 5-21.

295. Stage has not had any problems living next to WRI. Stage 1951: 8-16.

### **Ron James**

296. Ron James has lived in Eagles Nest for 41 years. James 1892: 4-6.

297. James' property is approximately 100 yards from property owned by Andrew Urban. James 1891: 20-1892: 3.

298. James was a member of the Eagles Nest Bear Committee. James 1894: 25-1895: 5.

299. James periodically sees collared and non-collared bears. James 1892: 13-17.

300. James has not noticed any changes over the years regarding bear issues. James 1894: 16-24; 1906: 14-16.

301. James does not experience any problems with black bears. James 1892: 21-23.

302. James does not have any safety concerns regarding bears. James 1893: 5-7.

303. James has not changed his lifestyle because of bears. James 1893: 8-15.

### **Donna Surface**

304. Donna Surface moved to Ely 15 years ago. Surface Dep. Tr. 6: 11-16; 5: 15-16.<sup>12</sup>

305. Surface's property is "a few miles" from WRI's property. Surface Dep. Tr. 7: 6-11.

306. Surface saw more bears when she was building her house than she does today. Surface Dep. Tr. 10: 3-13.

307. Surface did not see any bears last summer (the summer of 2013). Surface Dep. Tr. 10: 14-17.

308. Surface and her husband have never had any problems with bears. Surface Dep. Tr. 12: 9-22.

---

<sup>12</sup> The deposition transcript of Donna Surface was submitted at trial as Exhibit 218.



309. Surface has never seen a bear exhibit aggressive behavior. Surface Dep. Tr. 15: 11-14.

310. Surface views seeing bears as a very positive experience. Surface Dep. Tr. 12: 23-25.

311. Surface is not concerned about Dr. Rogers' research. Surface Dep. Tr. 13: 14-16.

### **Sherry Hill**

312. Sherry Hill's property is located on Peninsula Road.<sup>13</sup> She bought her property in 2008. Hill 1615: 6-1616: 8.

313. Hill's property is one-half mile from WRI's property. Ex. 215; Hill 1616, 16-18.

314. Hill feeds bears at her property. She has fed bears since 2008. Hill 1623: 4-10.

315. Hill testified that she feeds bears because she wants to feed bears and that Dr. Rogers did not cause her to feed bears. Hill 1624: 6-8.

316. Hill testified that no one has asked her to stop feeding bears. Hill 1624: 3-5.

317. Hill has friends and children visit her cabin. Hill 1617: 2-1618: 13.

318. Hill sees both collared and non-collared bears on her property. Hill 1619: 13-15.

319. Hill periodically sees bears at the intersection of Trygg Road and Peninsula Road (Ex. 215) when bears are travelling to the peninsula. Hill 1620: 3-9.

320. Hill has never had a problem shooing away or scaring off bears. Hill 1621: 9-12.

321. Hill has not modified her behavior because of bears. Hill 1622: 11-14.

322. Hill has not noticed any changes over the years regarding bears. Hill 1624: 9-13.

---

<sup>13</sup> Peninsula Road is located on a peninsula on Eagles Nest Lake No. 1. Ex. 215. Evidence at trial showed that residents on the peninsula, including Anderson, Midtling, Hanson, Meyer, Hill and Ragan have fed bears in the past and/or feed bears today.

323. Hill does not have any safety concerns regarding bears. Hill 1622: 23-1623: 3.
324. Hill does not have any concerns about Dr. Rogers' research. Hill 1624: 18-25.

**Charley Meyer**

325. Charley Meyer lives on Peninsula Road. Ex. 215. Meyer 1546: 11-1547: 22.
326. Meyer has lived in Eagles Nest year-round for 15 years. Meyer 1548: 10-16.
327. Meyer's property is one-half mile from WRI's property. Ex. 215; Meyer 1548: 7-9.
328. Meyer sees collared and non-collared bears regularly. He has always been able to shoo away or scare off bears. Meyer 1548: 17-1549: 11; 1561: 16-21.
329. Meyer has been feeding bears for 15 years. Meyer 1549: 19-23.
330. Meyer feeds bears approximately 50 feet from his cabin. Meyer 1564: 14-25.
331. Meyer's decision to feed bears has nothing to do with Dr. Rogers. Meyer 1551: 7-17.
332. Meyer believes that the Andersons, Midtlings, Hills and Hansons (who all live on Peninsula Road) have fed bears in the past or currently feed bears. Meyer 1550: 11-22.
333. Meyer believes that residents have been feeding bears on Peninsula Road since the early 1980s. Meyer 1550: 23-1551: 6.
334. Meyer has hand-fed bears. Meyer believes that he is the person that food-conditioned the study bear known as "June." Meyer believes that he has hand-fed bears other than June that had not previously been hand-fed by anyone else. Meyer 1608: 7-1609: 2.
335. Meyer testified that no one has ever asked him to stop feeding bears. Meyer 1551: 18-24.

336. Meyer has not noticed any changes in the behavior of bears during the time he has lived in Eagles Nest. He does not have any concerns about WRI. Meyer 1553: 19-1554: 17.

337. Meyer has never had problems with bears. Meyer 1552: 8-19.

338. Meyer does not have any safety concerns about bears. Meyer 1552: 20-1553: 16.

### **Larry Anderson**

339. Larry Anderson lives on Peninsula Road. Ex. 215; Anderson 1854: 24-1855: 2.

340. Anderson moved to Eagles Nest in 1999. Anderson 1856: 8-9.

341. Anderson is a veterinarian. Anderson 1855: 16-1856: 14.

342. Anderson did not see many bears last summer (the summer of 2013). Anderson 1860: 15-22.

343. Anderson feeds bears at his property. Anderson 1860: 15-1861: 23.

344. Anderson feeds bears approximately 50 feet from his house. Anderson 1862: 8-21.

345. Anderson does not have any problems with bears. Anderson 1865: 12-1866: 18.

346. Anderson does not have any problems with Dr. Rogers' research. Anderson 1867: 1-6.

### **Shelly Beyer**

347. Shelly Beyer purchased her cabin in 2004. Beyer 213: 12-13. She lives on Peninsula Road, where residents feed bears. Beyer did not have any problems with bears until 2009. Beyer 242: 1-4.

348. Beyer testified that there are "bear trails" through her yard. Beyer 242: 19-243: 15.

349. Beyer understands that she lives in an area where bears are fed. Beyer 249: 5-8.
350. Beyer assumes that other residents feed bears. Beyer 244: 2-5. She has never asked anyone to stop feeding bears. Beyer 245: 24-246: 1.
351. Beyer has never complained to the DNR that her neighbors feed bears. Beyer 249: 13-18.
352. Beyer believes that the bears that visit her property are not malicious. Beyer 251: 4-7.
353. On one occasion, a collared bear that visited Beyer's property was shot and killed by DNR Conservation Officer Starr. Exs. 554, 555.
354. Beyer learned that the bear that was shot on her property may have been hand-raised and released into the wild. Beyer 253: 2-22.
355. Mansfield testified that the DNR releases hand-raised bears into the wild. Mansfield 2102: 21-22.
356. The DNR testified that it releases hand-raised bears into wild. Cornicelli 1409: 19-1411: 13.
357. Mansfield testified that the bear that was shot on Beyer's property (known as "Noliana") was not a WRI research bear. Mansfield 2102: 5-17.
358. Only three weeks elapsed between the time the bear known as "Noliana" was collared by WRI and the time she was killed on Beyer's property. Rogers 2300: 16-20.

**Andrew Urban**

359. Andrew Urban moved to Eagles Nest in 2004. Urban 401: 18.
360. Last summer (the summer of 2013), Urban saw only a couple of bears. Urban 450: 24-451: 10.

361. Urban lives on Walsh Road across from the Ragan property, which is on the peninsula. Urban 449: 2-3.

362. Ex. 560 is a record of a complaint made by Urban. The complaint reflects that Urban is aware that bears are fed on the peninsula and Urban expects bears to move through the area. Urban 454: 121-455: 3.

363. Urban understands that bears travel on the Walsh Road corridor to Urban's property, and then swim to the peninsula to feed. Ex. 215; Urban 450: 13-23; 452: 23-453: 2. Ex. 559.

364. Urban has never asked residents who feed bears on the peninsula to stop feeding bears. Urban 452: 7-15.

365. Urban believes that the bears he sees do not show aggressive behavior. Ex. 540. Urban 454: 3-4.

366. Urban believes that it is possible that bears are being habituated by residents of Eagles Nest feeding the bears. Urban 467: 23-469, 1.

### **Barbara Soderberg**

367. Barbara Soderberg moved to Eagles Nest in 1983. Soderberg 979: 9-11.

368. Soderberg lives on Trygg Road, one-half mile from the intersection of Trygg Road and Peninsula Road. Ex. 215; Soderberg 1005: 6-8.

369. Soderberg believes that a resident on Trygg Road feeds bears. Soderberg 1012: 2-17.

370. Soderberg is aware that the Midtlings (who live on the peninsula) feed bears. 1010: 21-25.

371. Soderberg is concerned about bears being habituated by residents of Eagles Nest. Soderberg 1014: 15-1015: 8.

372. Soderberg doesn't know whether problems with bears are caused by WRI or by her own neighbors feeding bears. Soderberg 1019: 7-14.

373. In 2008, Soderberg complained to the DNR. Ex. 423. Soderberg 1021: 5-21. There are no records of complaints by Soderberg after 2008.

374. Soderberg has never asked Dr. Rogers about his research. Soderberg 1031: 25-1031: 5.

375. Soderberg does not have an opinion regarding whether it should be legal to feed bears in Minnesota. Soderberg<sup>14</sup> 1037: 11-15.

### **Bear Head State Park**

376. Bear Head State Park gets 85,000 visitors each year, including 30,000 that stay overnight. Westlund 474: 1-8.

377. Jan Westlund is the Park Manager at Bear Head State Park. Westlund 470: 13-14.

378. Westlund testified that the Park keeps a "Bear Occurrence Log," which covers the period May 22, 2011 through August 20, 2013. Ex. 594; Westlund 501: 1-4. The "Bear Occurrence Log" records bear sightings in the Park. Ex. 594.

379. During May 22, 2011 through August 20, 2013 (two years, which cover three summers) the Park would have had at least 170,000 visitors and 60,000 overnight visitors.

---

<sup>14</sup> Soderberg testified that others in Eagles Nest might be concerned about bears, but did not come forward in this proceeding because of a concern that they would be "harassed" by Dr. Rogers' supporters. Soderberg 990: 10-15. However, there was no evidence of any such "harassment."

380. Westlund testified that the Bear Occurrence Log includes only two entries that Westlund considers threats to public safety. One entry involved campers seeing a bear in the forest where the bear made a “popping sound.” The second entry involved a bear and two cubs that approached vehicles. Westlund 502: 13-507: 8. Neither case involved human contact with a bear, and neither case involved injury.

### **Alleged Injuries**

381. The DNR presented evidence regarding alleged injuries to (a) Duane Gustafson, (b) Don Midtling and (c) Sharon Thompson.

#### **Gustafson**

382. Duane Gustafson pretended to have food to attract a bear for a photograph, and was allegedly “nipped” on the hand. Soring 836: 21-837: 14; Starr 759: 3-10.

383. However, Dan Humay saw Gustafson’s hand two or three days after the incident. Humay stated that he did not see an injury to Gustafson’s hand. Humay 1775: 25-1776: 11. Ron James agreed that there did not appear to be an injury to Gustafson’s hand. James 1896: 9-25. Photographs of Mr. Gustafson’s hand do not appear to show an injury. Ex. 551.

#### **Thompson**

384. Jill Lindsey was a student in WRI’s Field Study Course in August, 2011. Lindsey 360: 10-12.

385. Lindsey testified that another student, Sharon Thompson, was “bitten” by a bear and that Lindsey saw the “bite.” Lindsey 385: 4-8; 386: 20-321: 13.

386. However, Sharon Thompson testified that she was not bitten by a bear. Thompson Dep. Tr. (Ex. 837) 6:10-17. Thompson testified that she was “scratched,” and that

she has “had worse cat scratches before . . .” Thompson 7: 11-13. In addition, Thompson testified that Lindsey never actually saw the scratch. Thompson 7: 20-21.

387. Lindsey submitted an Affidavit to the DNR regarding the alleged incident Ex. 571. Commissioner Landwehr reviewed the Affidavit and concluded that the Affidavit was not sufficient to charge Dr. Rogers with violating his permit. Landwehr 95: 3-8; 136: 15-19.

388. Lindsey was not a credible witness.<sup>15</sup>

### **Midtling**

389. Don Midtling feeds bears at his residence.

---

<sup>15</sup> Lindsey became involved with WRI in July or August of 2010. Lindsey 360: 1-4. Lindsey took a leadership role in “Team Bear,” an independent group of volunteers that did fundraising for WRI. Lindsey 268: 23-369: 5. Lindsey felt very close to WRI. Lindsey 367: 16-19. Lindsey testified that she became uncomfortable with the way bears are treated at WRI and, after the course, started “separating” herself from WRI. Lindsey 350: 25-351: 17.

However, after the Field Study Course, Lindsey got a tattoo of a bear paw. Lindsey 366: 13-367: 12. On August 14, 2011, Lindsey sent e-mail to WRI stating that she had a “fantastic” time. Lindsey 365: 8-17. Lindsey was personally affected by the death of the bear known as Hope. Lindsey 370: 1-371. Lindsey blamed Dr. Rogers for the death of Hope. Lindsey 372: 8-12. In October 2011, Lindsey sent an email to WRI stating that her “loyalties never wavered.” Lindsey 376: 5-10. In October 2011, Lindsey felt betrayed by Team Bear members. Lindsey 373: 14-375: 12. Lindsey believed that Mansfield was aligning herself with others at Team Bear. Lindsey 375: 14-24. Lindsey removed Mansfield from the Team Bear website. Lindsey 377: 2-6. Lindsey testified during cross examination that she dissolved Team Bear because of dissent. Lindsey 379: 24-380: 9. Lindsey testified during cross examination that she stopped fundraising because of changes to Facebook. Lindsey 373: 8-13.

Lindsey testified that she started using the name “Kara Johansen” in December 2011 or January 2012 because she was concerned about “threats” from others for “separating” from WRI. Lindsey 356: 10-357: 3. However, Lindsey admitted during cross-examination that she used the name Kara Johansen in 2010. Lindsey 392: 11-393: 5.

Lindsey created Facebook pages and listed Commissioner Landwehr as her family member “Uncle Tom.” Lindsey 381: 1-382: 24.



390. Midtling approached a mother bear, got between the mother bear and her cub, and was swiped by the mother. There is no evidence that the mother bear was collared. Starr 753: 6-14.

### **Expert Testimony Regarding Public Safety**

#### **Dr. Rogers**

391. Dr. Rogers testified that habituated bears are not more likely than non-habituated bears to be dangerous. Rogers 2238: 7-2239: 4.

392. In Dr. Rogers' earlier study, he concluded that habituated bears resulted in an 88 percent reduction in nuisance problems. Rogers 2227: 13-15.

#### **Dr. Wood**

393. Dr. Wood testified that feeding a bear does not make the bear a nuisance bear. Wood 1726: 2-1727: 20.

#### **Dr. Garshelis**

394. Dr. Garshelis testified that diversionary feeding, recreational feeding and supplemental feeding do not necessarily create a public safety issue. Garshelis 1218: 9-1219: 22.

#### **David Telesco**

395. The DNR offered testimony from David Telesco. Telesco is a bear management program coordinator in Florida.<sup>16</sup> Telesco 773: 15-21.

396. There are 3000 bears in Florida. Telesco 796: 5-9.

---

<sup>16</sup> Telesco and Garshelis are both associated with International Bear News. Telesco 791: 7-12. Garshelis shared his views with Telesco prior to the hearing. Telesco 791: 13-792: 15.

397. Florida had 6,700 bear complaints last year. Telesco acknowledged that there is a bear problem in Florida. Telesco 796: 10-24.

398. Feeding bears is illegal in Florida. Telesco 788: 21-23.

399. Telesco testified that to determine whether feeding in connection with research is appropriate, he would need to investigate the specific facts. Telesco 794: 5-10.

400. Telesco has never been to Eagles Nest. Telesco 788: 19-20.

401. Telesco has never been to WRI, never seen what Rogers does, and never talked to Rogers or Mansfield. Telesco 794: 11-20.

402. Telesco believes that bears are habituated through any kind of feeding. (Telesco 784: 17-788: 15), and that “any time a bear has lost its fear of people, that is a public safety risk.” Telesco 780: 10-14. However, that opinion is directly contrary to the testimony provided by the DNR’s own bear expert, Dr. Garshelis. Dr. Garshelis testified that diversionary feeding, recreational feeding and supplemental feeding do not necessarily create a public safety issue. Garshelis 1218: 9-1219: 22.

### **Dr. Breck**

403. The DNR offered the testimony of Dr. Stewart Breck. Dr. Breck has not been to WRI, and has not interviewed Dr. Rogers or Mansfield. Breck 875: 25-876: 9.

404. Breck acknowledged that it is difficult to find a national protocol about whether it is good, bad or neutral to feed bears. Breck 848: 16-20.

405. Breck conceded that some wildlife biologists do not agree that feeding bears causes problems. Breck 871: 9-18.

406. Breck agrees that researchers should not simply accept beliefs or views because they are the majority view. Breck 881: 8-10.

407. Breck noted that other researchers around the country are doing studies on bears and food. He acknowledged that animal/food studies are of growing importance. Breck 878: 5-879: 24.

408. Breck acknowledged that using food in animal research is appropriate. Breck 875: 16-20.

409. Breck acknowledged that there are occasions when diversionary feeding of bears is appropriate. Breck 872: 17-19.

410. Breck stated that “allowing bears access to human foods increases the risk, not only to the bear, but to human health and safety.” He also stated that recreational feeding of bears is never appropriate. Breck 849: 9-13; 874: 16-18. However, that opinion is directly contrary to the DNR’s own bear expert, Garshelis. Dr. Garshelis testified that diversionary feeding, recreational feeding and supplemental feeding do not necessarily create a public safety issue. Garshelis 1218: 9-1219: 22.

### **Written Complaints**

411. The DNR’s Public safety concerns are derived from complaints made by residents of the Eagle Nest Area. Cornicelli 1383: 14-17.

412. There are two kinds of complaints – “Nuisance Bear Logs” and “Initial Complaint Reports” or “ICR’s.”

413. There is no evidence that anyone has ever been injured by a collared bear that is the subject of Dr. Rogers’ study. Cornicelli 1381: 19-24.

414. Dr. Garshelis is responsible for recording and interpreting bear nuisance complaints and determining what kind of trends are occurring. Garshelis 1234: 4-11.

415. The DNR concedes that its statewide complaint records appear to show that the feeding that takes place in Eagles Nest has reduced complaints by 80 percent. Garshelis 1171: 8-1173: 3.

416. The DNR told Dr. Rogers that it would not let Dr. Rogers use the statewide complaint data in Dr. Rogers' research. Garshelis 1162: 1-1163: 5.

417. The DNR has not done a comparison of Eagles Nest complaints with complaints from other areas of the state. Soring 835: 21-836: 6; Rusch 633: 10-17; Landwehr 122: 12-25.

418. Dr. Garshelis does not know whether there are more problems with bears in Dr. Rogers' study area than other areas of the state. Garshelis 1235: 21-25.

419. Dr. Cornicelli agreed that it is difficult to know if there are more problems with bears in the Eagles Nest area than elsewhere in the state. Cornicelli 1400: 14-1401: 14.

420. The DNR acknowledges that it is impossible to know what nuisance complaints in Eagles Nest relate to bears being fed by someone associated with Dr. Rogers as opposed to bears being fed by other residents of Eagles Nest. Garshelis 1235: 6-7.

421. Bears are habituated at the Vince Shute Wildlife Sanctuary, which could lead to some nuisance behavior in the Eagles Nest area. Garshelis 1445: 25-1446: 15.

422. The DNR concedes that there is no way to prove who habituated a non-collared bear. Garshelis 1446: 16-18.

423. The DNR concedes that it cannot show that a non-collared bear that is subject of nuisance complaint is related to Dr. Rogers. Garshelis 1446: 20-22.

424. As a general matter, bear complaints increase with time as more people build houses in bear country. Garshelis 1213: 1-4.

425. As a general matter, when food in the forest is scarce, bears tend to move into human territory. Garshelis 1213: 16-18; Rusch 623: 24-624: 8.

426. A typical bear complaint involves bears getting into bird feeders. Rusch 186: 21-25.

427. Bears routinely raid bird feeders and overturn garbage cans. Garshelis 1213: 19-21.

428. Generally, even in areas with habituated bears, if attractants are removed, problems tend to go away. Rusch 631: 1-6.

### **Statewide Complaints**

429. Ex. 212 contains a list of statewide bear complaints. Rusch 635: 6-18.

430. The statewide bear complaints show that it is common for bears to visit homes, cabins and yards, and wander through neighborhoods. Rusch 630: 1-6.

431. Bears have been reported on decks in other areas of the state. Rusch 633: 24-634: 16.

432. Bears have chased children in other areas of the state. Rusch 634: 13-16.

433. Ex. 593 is the DNR's "Nuisance Bear Guide." It lists threats to human safety as a common complaint state-wide. Rusch 627: 11-24.

434. In Carlton County, a large bear was roaming through a neighborhood, and a boy was trapped in a sauna by a bear. Rusch 636: 23-638: 1.

435. In Duluth, a bear was in a garage while children (two and five years old) were there. Rusch 638: 8-639: 9.

436. In Washington County, a bear went through a screen porch. Rusch 639: 10-640: 20.

437. In Lake County, a bear tore a screen on a window and took a bag of apples off the kitchen counter. Rusch 640: 21-641: 12.

438. In Lake County, a bear destroyed property, chased children, and broke into a shed. Rusch 641: 13-642: 8.

439. In Pine County, a bear was on a deck looking in windows. The bear did not leave when a shotgun was discharged. Rusch 642: 9-644: 5.

**The Integrity of the DNR's Complaint Records is Suspect.**

440. Tom Rusch is the Wildlife Manager in Tower. Rusch 177: 23.

441. Rusch records the majority of bear complaints in the Eagles Nest area. Rusch 590: 12-17.

442. When Rusch started as the Wildlife Manager in Tower, he had low regard for Dr. Rogers. Rusch 598: 16-20.

443. When Rusch started as Wildlife Manager in Tower, he had already concluded that Dr. Rogers was causing problems. Rusch 599: 7-16.

444. When Rusch started as Wildlife Manager in Tower, he met with Dr. Rogers and was advised by Dr. Rogers that there had not been significant bear complaint activity in the Eagles Nest area from 1998-2005. Rusch 599: 22-600: 1.

445. Two weeks after meeting with Dr. Rogers, Rusch recorded his first bear complaint from Darrell Stage. Rusch 601: 8-25; 603: 22-604: 1.

446. Stage never asked Rusch to write a complaint, and Stage did not know a complaint was recorded in his name. Stage 1949: 7-23; Rusch 604: 2-6.

447. Rusch prepared a Nuisance Complaint Log that stated "cannot feed birds." Stage did not tell Rusch that Stage "cannot feed birds." Stage 1947: 25-1948: 20.

448. Rusch recorded on the Nuisance Complaint Log that Stage “puts up with Rogers bear traffic to be neighborly.” Stage did not tell Rusch that Stage “puts up with Rogers bear traffic to be neighborly.” Stage 1949: 7-12.

449. Stage sent a letter to the DNR stating that a complaint should not have been filed in his name. Ex. 22; Stage 1949: 24-1951: 7.

450. The DNR responded to Stage and acknowledged that a complaint should not have been filed in Stage’s name. Ex. 760, Stage 1951: 22-25.

451. Rusch testified that he recorded two or three other bear complaints regarding individuals who did not complain. Rusch 604: 11-20.

452. Two years after Rusch recorded a bear complaint, and before he provided a copy of the Complaint to Dr. Rogers, Rusch added the word “collared” to the complaint. Ex. 541; Rusch 595: 10-598: 11.

453. The complaint marked as Ex. 505 refers to a collar. However Ex. 547, which is the ICR for the same incident, does not refer to a collar. Rusch 648: 22-650: 3.

454. Rusch does not generally witness the event that is the subject of the complaint. The complaining party generally does not refer to the word “habituated.” Rusch records the word “habituated” based on his interpretation of the event as described by the complaining party. Rusch 644: 18-645: 18.

455. Rusch testified that he always writes a complaint if he thinks the bear that is the subject of the complaint is habituated. Rusch 645: 22-646: 4.

456. The DNR acknowledges that a bear may be habituated by Dr. Rogers feeding it or by other residents feeding it. Rusch 644: 6-11.

457. In 2007, Rusch recommended that residents of Eagles Nest organize a petition against Dr. Rogers. Rusch 608: 18-609: 2.

458. Rusch did not tell Dr. Rogers about the petition. Rusch 612: 14-613: 2.

459. In August 2007, a Township meeting was held as a result of Rusch's recommendation that residents organize a petition against Dr. Rogers. Rusch 613: 3-9.

460. At the Township meeting, Rusch made comments in opposition to Dr. Rogers. Rusch 613: 21-614: 2.

461. Rusch made recommendations and suggested that the Bear Committee adopt his recommendations. Rusch 617: 12-15.

462. The Bear Committee rejected Rusch's recommendations. Rusch 621: 19-622: 21.

463. The complaints marked as Exs. 502, 511 and 519 were made by same resident who was complaining about her neighbor feeding bears. Rusch 648: 5-21.

464. If a resident feeds bears, it is more likely that his/her neighbors will see bears. Rusch 646: 9-21.

465. The complaint marked as Ex. 505 does not refer to bird feeders, but the ICR relating to the same incident does reference bird feeders. Rusch 640: 19-24.

466. The complaint marked as Ex. 520 references oats in the bear's feces. Oats are used by hunters in their bear bait. Rusch 657: 12-658: 11.

467. The complaint marked as Ex. 525 is from a resident whose neighbors feed bears. Rusch 658: 12-21.

468. The complaint marked as Ex. 531 refers to an individual who enticed a bear with food to get a picture. Rusch 658: 22-660; 25.



469. Some complaining parties do not tell the truth about whether they have attractants like bird feeders on their property. Rusch 646: 5-8.

470. Ex. 556 refers to a complaint by an individual who has several bird feeders. Starr 741: 25-742: 11. The individual has neighbors that also have bird feeders. Starr 743: 2-744: 24.

471. Ex. 563 contains a complaint by an individual who has bird feeders. Starr 754: 16-755: 25.

472. Exs. 502, 511, 591, 558 contain complaints by a resident about her neighbors' feeding bears. Starr 748: 19-750: 13.

473. The DNR does not know whether the bear referenced in the complaint marked as Ex. 557 was involved with Dr. Rogers' study. Starr 747: 24-748: 9.

474. The DNR often describes a bear as "habituated" if it tried to get into bird feeders. Starr 756: 1-757: 4.

475. The complaint recorded as Ex. 546 refers to bear #32 breaking a screen on a porch. Williams 531: 3-533: 13.

476. It is possible that the homeowner assumed it was bear #32. Williams 534: 8-15.

477. Dr. Rogers asserted that GPS data for bear #32 shows that bear #32 was not in the area. Williams 536: 16-22.

### **CONCLUSIONS OF LAW**

1. Dr. Rogers needs a permit to radio collar bears only if his actions constitute "possession" of the bears he collars.

2. Possession requires the exercise of "control." Minn. Stat. § 97A.015, subd. 36 (defining possession as "both actual and constructive possession and control of the things referred to"). Actual possession is evidenced by direct physical control. Constructive possession

is evidenced by the power and intention to exercise control, either directly or through others. Control requires an exercise of power or dominion over the thing controlled.

3. As applied to wild animals, possession requires confinement, capture, or removal from nature. See Hollywood Park Humane Soc’y v. Town of Hollywood Park (“Hollywood Park II”), 261 S.W.3d 135, 140 (Tex. Ct. App. 2008).

4. Activities such as (a) feeding, (b) providing shelter, (c) naming, and (d) developing relationships with animals as though they were “pets,” are not sufficient to reduce an animal to one’s “possession and control.” See, e.g., Koop v. United States, 296 F.2d 53, 59 (8th Cir. 1961); In re Oriental Repub. Uruguay, 821 F. Supp. 950, 952-53 & n.2 (D. Del. 1993); Calvert v. Zimmer (“Calvert I”), No. 95-2041, 1995 U.S. Dist. LEXIS 13401, at \*14-17 (E.D. Pa. Sept. 11, 1995); Calvert v. Zimmer (“Calvert II”), 1995 U.S. Dist. LEXIS 18297, at \*2-3 (E.D. Pa. Dec. 7, 1995); See, e.g., Hollywood Park Humane Soc’y v. Town of Hollywood Park (“Hollywood Park I”), No. SA-03-CA-1312, 2004 U.S. Dist. LEXIS 783 (W.D. Tex. Jan. 23, 2004). An animal’s “habits” are not the relevant consideration. See Hollywood Park II, 261 S.W.2d at 140 (citing State v. Bartee, 894 S.W.2d 34, 41-42 (Tex. Ct. App. 1994)); Calvert II, 1995 U.S. Dist. LEXIS 18297, at \*2-3.

5. The DNR did not present any evidence that Dr. Rogers pens, traps, restrains, sedates, or in any way exerts “direct physical control” over the bears he radio collars. The DNR has not argued, and there is no evidence to support a finding, that Dr. Rogers’ conduct constitutes actual possession of bears.

6. The DNR did not present any evidence that how Dr. Rogers collars bears constitutes constructive possession.

7. The DNR presented evidence that Dr. Rogers feeds and closely interacts with bears. However, the DNR concedes that such conduct is legal in Minnesota, and does not require a permit.

8. To the extent that the DNR argues that Dr. Rogers legal conduct, taken in the aggregate, requires a permit or constitutes possession, is not supported by law. There is no legal theory that supports the conclusion that legally-protected conduct, when combined with other legally-protected conduct, transforms into illegal conduct.

9. Moreover the rule advanced by the DNR would be impossible to apply. If it is the combination of Dr. Rogers' interactions with bears over time that amount to possession and control, then Dr. Rogers might need a permit to collar some bears but not others. For example, if Dr. Rogers encounters a bear that has previously been habituated and places a collar on it, he would not be exercising possession and control over that bear. On the other hand, an area resident who does not use collars but who regularly hand-feeds and interacts with bears to the extent that those bears keep returning to his property would find himself in violation of the statute. Such a rule would thus require a case-by-case (and bear-by-bear) analysis that would be impossible to apply. Minn. Stat. § 645.17(1).

10. Interpreting "possession" to encompass Dr. Rogers' conduct would fail to give fair notice to the public regarding conduct that may be criminal. A statute is unconstitutionally vague if it "fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by statute." United States v. Harriss, 347 U.S. 612, 617, 624 (1954); see also Dunn v. United States, 442 U.S. 100, 112 (1983). Stated differently, "a fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed. To make the warning fair, so fair as possible the line

should be clear.” United States v. Bass, 404 U.S. 336, 339, 348 (1971). Further, when conduct that may result in a criminal violation is ordinarily legal, courts must consider whether the statute provides adequate notice that the conduct at issue could be a crime. See Liparota v. United States, 471 U.S. 419, 426-27 (1985); see also United States v. Chevron USA, Inc., No. 09-0132, 2009 U.S. Dist. LEXIS 102682, at \*10-11 (W.D. La. Oct. 30, 2009).

11. A statute must provide clear guidance so that “those charged with applying the statute are not required to make basic policy decisions on a subjective or arbitrary basis.” Fogie v. THORN Ams., Inc., 95 F.3d 645, 650 (8th Cir. 1996) (citing Grayned v. City of Rockford, 408 U.S. 104, 108-09 (1972)).

12. The DNR’s proposed construction of “possession” under the applicable statutes would not give fair notice and would be subject to subjective or arbitrary enforcement.

13. The rule of lenity is a rule of statutory construction that requires ambiguous criminal statutes to be construed narrowly. E.g., State v. Stewart, 529 N.W.2d 493, 496-97 (Minn. Ct. App. 1995); State v. Barsness, 795 N.W.2d 877, 882 (Minn. Ct. App. 2011); State v. Sorenson, No. A06-746, 2007 Minn. App. Unpub. LEXIS 598, at \*5 (Minn. Ct. App. June 7, 2007). While Dr. Rogers is not being criminally prosecuted in this contested-case proceeding, the fact that Dr. Rogers (or any other citizen) may be subject to criminal prosecution for the unlawful “possession” of a wild animal without a permit dictates that the statutes at issue must be narrowly construed.

14. An interpretation of “possession” that applies to Dr. Rogers’ conduct of feeding and interacting with bears in the aggregate would create a gray area regarding when activities such as feeding, hand-feeding, and closely interacting with bears crosses the line from legal activity to “possession and control” that is unlawful without a permit. The DNR would have

wide-ranging discretion to determine whether other individuals who feed and interact with bears may also be crossing the line from legal activity into “possession and control.” The residents of Eagles Nest Township, operators of the Vince Shute Wildlife Sanctuary, and other members of the public would be left to guess whether they could legally feed and interact with bears without being subject to criminal prosecution under Minn. Stat. § 97A.301, subd. 1.

15. In summary, Dr. Rogers’ conduct in collaring bears does not constitute possession. Moreover, the rule advanced by the DNR is not supported by the law and would be impossible to apply.

16. Even if a permit had been required, the DNR did not meet its burden of showing by a preponderance of the evidence that it had cause to take action against the permit as set forth in the DNR’s June 28, 2013 letter.

17. The DNR commenced this contested case proceeding specifically to address the following issue:

Whether DNR has cause to not renew Special Permit No. 16868 (December 12, 2012) authorizing Respondent to capture, handle, monitor, and place radio collars on black bears for research and educational purposes.

Notice and Order for Prehearing Conference and Order for Hearing, at p. 12.

18. The DNR’s ability to revoke or deny Dr. Rogers’ permit is governed by Minnesota Statutes § 97A.418. Section 97A.418 applies the same legal standard—“for cause”—to the DNR’s decision regarding Dr. Rogers’ permit, regardless whether that decision is characterized as a decision to revoke his permit or to deny a new permit.

19. The fish and game laws and related regulations do not further define what constitutes “cause.” While subparts of Minnesota Rule 6212.1400 provide guidance regarding permit decisions and permit conditions, including some examples of what types of findings may

constitute “cause,” nothing in Rule 6212.1400 actually defines the term. In addition, there are no Minnesota cases defining and analyzing “cause” in the context of Minn. Stat. § 97A.418.

20. The concept of “for cause” has been developed by Minnesota courts in other contexts, however, and those cases are instructive. The Minnesota Supreme Court has approved a definition of “for cause” that requires the cause to be (1) “real,” as opposed to arbitrary or capricious, and (2) something that a reasonable decision-maker acting in good faith would consider sufficient to support the decision:

The term ‘cause’ generally means a real cause or basis for dismissal as distinguished from an arbitrary whim or caprice. That is, some cause or ground that a reasonable employer, acting in good faith in similar circumstances, would regard as a good and sufficient basis for terminating the services of an employee.

Hilligoss v. Cargill, Inc., 649 N.W.2d 142, 146 (Minn. 2002). The terms “good cause,” “just cause,” and “cause” are interchangeable. See id. at 148.

21. For the DNR to make a decision based on “cause,” its decision must be based on “competent evidence in the record.” See Ukkonen v. Gustafson, 244 N.W.2d 139, 142 (Minn. 1976).

22. The vast majority of the evidence presented by the DNR consisted of photographs and videos depicting events that occurred prior to December 21, 2012, and testimony describing events that occurred in 2011 or earlier. It is undisputed, however, that the DNR continued to issue permits to Dr. Rogers through June 2013—including most recently on December 21, 2012. The DNR’s reliance upon evidence pre-dating the December 2012 permit decision in support of its position that it had “cause” to deny the permit in June 2013 is misplaced. To the extent the DNR was aware of evidence at the time it issued Dr. Rogers a permit on December 21, 2012, it may not rely on that same evidence as a basis for denying the permit six months later. To the

extent the DNR imposed specific conditions or expectations upon Dr. Rogers as a result of events pre-dating the December 2012 permit—with which Dr. Rogers complied—the DNR is estopped from now changing its position to deny Dr. Rogers’ permit on the basis of those events.

23. The DNR has never taken the position that Dr. Rogers’ den cams threaten public safety. (See Ex. 124 (stating in letter denying Dr. Rogers’ permit that it is Dr. Rogers’ habituation practices that create a “very real public safety issue”).) The DNR presented no evidence that Dr. Rogers’ use of den cams poses a public safety issue.

24. The DNR may not rely upon evidence of Dr. Rogers’ lack of peer-reviewed publication in light of its express statements to Dr. Rogers about its publication expectation and the fact that Dr. Rogers met that expectation. The Court thus rejects this as a basis for finding the DNR had “cause” for its June 28, 2013 decision.

25. Commissioner Landwehr testified that he did not deny the permit on the basis of the photos, videos, or other allegedly “unprofessional behavior.” Accordingly, the DNR may not rely upon the alleged “unprofessional behavior” as a basis for “cause” to deny the permit.

### **ORDER**

1. Dr. Rogers is not required to obtain a permit to collar bears without the use of tranquilizers or other physical restraints.
2. Special Permit 16868 (December 12, 2012) remains in effect with respect to Dr. Rogers’ use of den cams.

Dated: \_\_\_\_\_, 2014

---

TAMMY L. PUST  
Chief Administrative Law Judge