

STATE OF MINNESOTA  
COUNTY OF RAMSEY

DISTRICT COURT  
SECOND JUDICIAL DISTRICT

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Lynn Rogers and Wildlife Research Institute,  
Plaintiffs,

Case Type: Other Civil  
Court File No. 62-CV-13-5408

v.

Minnesota Department of Natural Resources  
and Tom Landwehr, Commissioner of the  
Minnesota Department of Natural Resources,  
Defendants.

**PLAINTIFFS' NOTICE OF MOTION  
AND MOTION FOR AN ORDER  
DIRECTING THE DNR AND TOM  
LANDWEHR TO SHOW CAUSE WHY  
THEY SHOULD NOT BE HELD IN  
CONTEMPT FOR VIOLATING THE  
COURT'S JULY 30, 2013 ORDER**

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To: Defendants Minnesota Department of Natural Resources and Tom Landwehr, Commissioner of the Minnesota Department of Natural Resources, and their counsel, David P. Iverson, Minnesota Attorney General, Bremer Tower Suite 1400, 445 Minnesota Street, St. Paul, Minnesota 55101.

PLEASE TAKE NOTICE that on October 14, 2013, at 10:30 a.m., or on such earlier date as the Court determines based upon its schedule, before the Honorable John H. Guthmann, Courtroom 1680, Ramsey County Courthouse, 15 W. Kellogg Blvd., Saint Paul, MN 55102, Plaintiffs Lynn Rogers and the Wildlife Research Institute will move the Court for an Order directing the Minnesota Department of Natural Resources ("DNR") and Commissioner Tom Landwehr to show cause why they should not be held in contempt for violating the Court's Order on Stipulation dated July 30, 2013.

Plaintiffs' Motion for an Order to Show Cause will be based upon the following facts:

- On July 30, 2013, the Court issued an Order on Stipulation (the "Order"), stating that Dr. Rogers's application for extension of DNR Special Permit No. 16868 "shall be submitted to a contested case hearing before an administrative law judge pursuant to the Minnesota Administrative Procedure Act [APA]."
- The APA requires the agency (here, the DNR) to initiate a contested case proceeding. See Minn. Stat. § 14.57; Minn. Rules 1400.5300 & 1400.5400. On

at least two separate occasions between July 30 and August 25, Plaintiffs' counsel contacted counsel for the DNR to inquire about the status of the DNR's commencement of a contested case proceeding. In response to each inquiry, the DNR's counsel advised Plaintiffs' counsel that the DNR has not yet taken the steps necessary to commence a contested case.

- On August 26, 2013, Plaintiffs' counsel sent an e-mail to counsel for the DNR stating:

On July 30, 2013, the Ramsey County District Court issued an Order directing that the above-captioned matter "shall be submitted to a contested case hearing..." As of today (and despite several phone calls), we have not received any information that the DNR has submitted the matter to a contested case hearing. Therefore, the DNR is in violation of the Court's Order. As a result, Dr. Rogers intends to file a motion for an Order finding the DNR and Commissioner Landwehr in contempt.

Please call me if you would like to discuss.

- After sending the above email, Plaintiffs' counsel spoke with the DNR's counsel. In that conversation, counsel for the DNR would not commit to a date by which the matter will be submitted to a contested case pursuant to the Court's Order.
- On August 16, 2013, the Timberjay Newspaper reported the following statement made by the DNR:

DNR officials have indicated they are likely to enforce their decision against Rogers regardless of any ruling by an administrative law judge.

If the DNR's statement is an accurate reflection of the DNR's position, it (a) shows the DNR's disregard for due process; (b) shows the DNR's disregard for the authority of the Administrative Law Judge; (c) supports the conclusion that the DNR is intentionally violating Paragraph 4 of the Order, which provides that the DNR's final decision will be made "upon review of the administrative law judge's report"; (d) supports the conclusion that the DNR is violating the APA, which provides that the DNR shall not make a final decision until after the Administrative Law Judge issues a report, and (e) depending upon who made the statement, may support the conclusion that the DNR is violating Paragraph 4 of the Order, which provides that the DNR's final decision "shall be made by a person not previously involved with the bear research permits granted to Dr. Rogers."

Additional documentation supporting this Motion will be submitted in accordance with the Local Rules. The Motion will be based upon Plaintiffs' submissions, the arguments of counsel, and all of the facts, records, and proceedings herein.

Respectfully submitted,

Dated: August 26, 2013

*/s David R. Marshall*

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