

1 CODE: \$1425  
2 JULIE CAVANAUGH-BILL  
3 Nevada Bar No. 11533  
4 CAVANAUGH-BILL LAW OFFICES, LLC.  
5 Henderson Bank Building  
6 401 Railroad Street, Suite 307  
7 Elko, NV 89801  
8 (775) 753-4357  
9 (775) 753-4360-Facsimile

Attorney for Plaintiffs

7 SECOND JUDICIAL DISTRICT COURT

8 STATE OF NEVADA

9 \* \* \*

10 MARK SMITH, DONALD A. MOLDE  
11 AND MARK E. SMITH FOUNDATION,

CASE NO.:

12 Plaintiffs-Petitioners,

DEPT. NO:

13 vs.

14 STATE OF NEVADA, ex rel., THE  
15 NEVADA BOARD OF WILDLIFE  
16 COMMISSIONERS, STATE OF  
17 NEVADA, ex rel., ITS DEPARTMENT  
18 OF WILDLIFE,

Defendant-Petitioners.

\_\_\_\_\_ /

19 **MOTION FOR PRELIMINARY INJUNCTION**

20 **(EXPEDITED HEARING REQUESTED)**

21 Plaintiffs move the Court pursuant to NRCPC 7(b)(1), NRCPC 65(a), and NRS 30.100, for  
22 preliminary and interlocutory injunctive relief enjoining Defendants/Respondents from enforcing  
23 the regulation regarding trap visitation intervals, and in turn enjoining the 2014-2015 fur trapping  
24 season, until further order of the Court, in order to prevent irreparable injury and to preserve the  
25 status quo pending final judgment. Absent the requested relief, the harm and fatality to non-  
26 target animals will be irreparable. There is a reasonable likelihood of success on the merits.  
27 The public interest is proper and constitutional rule making will be fostered by the relief.

28 This motion is made and based upon the following Points and Authorities, Plaintiffs'

1 Verified Complaint, such evidence and any argument the Court may entertain at a hearing on  
2 this motion, if any, and all the papers, pleadings and record on file in this action.

3 DATED August 28, 2014

4 CAVANAUGH-BILL LAW OFFICES, LLC  
401 Railroad Street, Suite 307

5 Elko, NV 89801  
6

7  
8 By: \_\_\_\_\_

9 JULIE CAVANAUGH-BILL  
10 NV Bar No: 11533  
11

12 **POINTS AND AUTHORITIES**

13 **Introduction**

14 The Nevada Board of Wildlife Commissioners (hereinafter referred to as “the  
15 Commission”) has promulgated a regulation regarding the Nevada fur trap visitation interval.  
16 Exhibit (“Ex.”) 3 to Declaration of Donald A. Molde (“Molde Declaration”). This rule making  
17 occurred pursuant to the Legislature’s delegation of its authority to make law establishing the  
18 interval. The Legislature authorized the Commission to determine what the law ought to be.  
19 The legislature is not supposed to delegate its law making function to executive agencies, for in  
20 doing so it delegates that function to the executive branch. This violates the separation of  
21 powers mandated by the Nevada Constitution, a mandate that undergirds our democratic form of  
22 State government. Here, the legislature violated the separation of powers doctrine by delegating  
23 its law making function to the Commission.

24 An exception to the non-delegation doctrine is delegation to engage in fact finding to  
25 establish facts that will cause the legislative edict to become operative. This is not what the  
26 legislature did in this instance. It delegated not a fact finding function, but the authority to  
27

1 determine the visitation periods for all of Nevada.

2 This exception also requires the legislature to set out reasonable criteria or guidelines by  
3 which the agency can guide its fact finding. Here, the legislature failed to set forth such criteria  
4 for the Commission. This violated a critical condition precedent to the exception to the non-  
5 delegation doctrine. The delegation failed to provide guidelines and failed to adequately define  
6 terms to be considered by the Commission. The Commission's interpretation of those terms  
7 was thus predictably going to be unreasonable. This resulted in a flawed rule making process.  
8

9 The importance of such a condition to the exception becomes clear in this case, as the  
10 Commission went astray in its fact finding function. With proper criteria in place, this might  
11 not have occurred. The Commission did not take into account data critical to the pivotal issue  
12 of the fur trap visitation interval, the issue upon which the legislature delegated its lawmaking  
13 function. This data, which is attached in summary form as Exhibit 1 to the Molde Declaration,  
14 shows the startling number of non-target species trapped incidental to the trapping of targeted  
15 species.

16 The animals and birds that are trapped suffer. Trapped with no access to food, water or  
17 protection from predators, mountain lions in particular have been frequently injured with paw  
18 and tooth injuries after being incidentally caught in traps. It is not speculative to infer that  
19 these injuries impair a mountain lion's ability to obtain its prey, and thus its ability to feed. *Id.*  
20 Photographs of such injuries are appended as Exhibit 2 to the Molde Declaration. The fur  
21 trapping visitation interval is vitally important to the animals not targeted by these traps. These  
22 non-target species should not find themselves in traps in the first place. The need to rescue them  
23 once trapped should thus be an emergency. It does not take a scientist to understand that  
24 dehydration and starvation would soon set upon the animal or bird so trapped. Animals and  
25 birds are traumatized in the steel trap grips, exposed to severe weather and subject to predation  
26 by other animals. Lessening the visitation interval gets the trapper to the trap before these  
27  
28

1 conditions become fatal. Lessening the visitation interval increases the chance of a successful  
2 rescue, and lessens the opportunities for the animal to further injure itself in the instinctive  
3 struggle to escape the trap or to be attacked by a predator.<sup>1</sup>

4 The non-target data should be considered against this backdrop. The summary is drawn  
5 by Molde from data collected by the Department of Wildlife (hereinafter referred to as “NDOW”)  
6 from trappers who submit annual reports of their trapping experiences for each season. Molde  
7 Declaration; NAC 503.160 (reporting requirement). That underlying data is available to the  
8 Defendants, as it is in their control. *Id.* It is estimated that about twenty percent of trappers  
9 submit such reports. *Id.* Thus, the data regarding trapped non-target animals shows only a  
10 fifth of the imaginable data.

11 The regulatory impact of the legislature’s failures, violating the separation of powers  
12 doctrine and not providing adequate guidelines, is compounded by the Commission’s utter failure  
13 to consider this undisputed data in determining whether and in which locales to lessen the trap  
14 visitation interval. “The agency shall consider fully all written and oral submissions respecting  
15 the proposed regulation.” NRS 233B.061(3). Molde attempted on multiple occasions to present  
16 this data to the Commission during times when the interval was on the Commission’s agenda.  
17 Molde Declaration.

18 On August 16, 2014, the Commission adopted its regulation and left the trap visitation  
19 statewide at 96 hours, with two minor exceptions near Reno and Las Vegas. Data shows that  
20 little trapping occurs near these cities. Molde Declaration. The Commission disregarded new  
21 information from the Department of Wildlife showing thousands of animals, birds, domestic  
22 animals and household pets, all non-target species, caught, injured and/or killed by traps over a  
23 decade of time. Molde Declaration. During Commission hearings, trappers threatened to trap  
24 closer to the cities if a statewide 24 hour visitation period was adopted. Molde Declaration.

25 The Commission has also failed to fulfill its statutory duty to develop a plan of wildlife

---

26 <sup>1</sup>Of course, the targeted species suffer equally in a trap.

1 management that would take into account proper trapping practices in order to protect and  
2 preserve non-targeted mammals and birds.<sup>2</sup>

3 Jurisdiction and Standing

4 Declaratory relief is available under NRS 30.030 (“Courts of record within their  
5 respective jurisdictions shall have power to declare rights, status and other legal relations whether  
6 or not further relief is or could be claimed. No action or proceeding shall be open to objection  
7 on the ground that a declaratory judgment or decree is prayed for. The declaration may be either  
8 affirmative or negative in form and effect; and such declarations shall have the force and effect  
9 of a final judgment or decree.”) and 30.040(1) (“Any person interested under a deed, written  
10 contract or other writings constituting a contract, or whose rights, status or other legal relations  
11 are affected by a statute, municipal ordinance, contract or franchise, may have determined any  
12 question of construction or validity arising under the instrument, statute, ordinance, contract or  
13 franchise and obtain a declaration of rights, status or other legal relations thereunder.”).

14 In order to be entitled to declaratory relief, the following conditions must be met: “(1)  
15 there must exist a justiciable controversy; that is to say, a controversy in which a claim of right  
16 is asserted against one who has an interest in contesting it; (2) the controversy must be between  
17 persons whose interests are adverse; (3) the party seeking declaratory relief must have a legal  
18 interest in the controversy, that is to say, a legally protectible interest; and (4) the issue involved  
19 in the controversy must be ripe for judicial determination.” *Doe v. Bryan*, 102 Nev. 523, 525,  
20 728 P.2d 443, 444 (1986) (citation omitted), abrogated on other grounds by *Buzz Stew, LLC v.*  
21 *City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670, 672 n.6 (2008). Here, the Commission has  
22 adopted a regulation that Plaintiffs argue is void, a regulation that will now be enforced by the

---

23  
24 <sup>2</sup>NRS 501.181 mandates that the Commission establish policies for the “protection” and  
25 “management” of wildlife in Nevada. This mandate includes management of “protected  
26 and unprotected mammals” and birds. In order to fulfill this mandate, a trapping  
27 management plan is essential to determine the impacts on wildlife and develop the  
28 appropriate mechanisms to fulfill the mandated “protection” of same.

1 Department. The Commission has not established a management plan that entails trapping, to  
2 include reasonable standards for trap setting and vigilance. There is thus an actual controversy  
3 between persons/entities whose interests are adverse. They are named in this suit.

4 Plaintiffs have a legal interest in the controversy. NRS 233B.110(1) provides:  
5 The validity or applicability of any regulation may be determined in the  
6 proceeding for declaratory judgment in the district court in and for Carson City or  
7 in and for the county where the plaintiff resides when it is alleged that the  
8 regulation, or its proposed application, interferes with or impairs, or threatens to  
9 interfere with or impair, the legal rights or privileges of the plaintiff. ... The  
10 Court shall declare the regulation invalid if it finds that it violates constitutional  
11 or statutory provisions or exceeds the statutory authority of the agency. The  
12 agency whose regulation is made the subject of the declaratory action shall be  
13 made a party to the action.

14 NRS 233B.110(3) provides that the action proceeds as one under the Uniformed Declaratory  
15 Judgments Act and the NRCP. Third party standing under the federal equivalent to NRS  
16 233B.110(1) has been found where friends of the whales sued to compel a different agency  
17 course of action. In *Japan Whaling Assn. v. American Cetacean Society*, 478 U.S. 221, 92 L.  
18 Ed. 2d 166, 106 S. Ct. 2860 (1986), the Court examined a statute requiring the Secretary of  
19 Commerce to certify to the President that foreign nations were not conducting fishing operations  
20 or trading which "diminis[h] the effectiveness" of an international whaling convention. *Id.* at  
21 226. The Court expressly found standing to sue. *Id.* at 230-231. Our own Court has recognized  
22 that public entities can be enjoined if they exceed their authority. *Reno v. Reno Newspaper,*  
23 *Inc.*, 105 Nev. 886, 890, 784 P.2d 974, 977 (1989). "[W]here the Legislature has provided the  
24 people of Nevada with certain statutory rights, we have not required constitutional standing to  
25 assert such rights but instead have examined the language of the statute itself to determine  
26 whether the plaintiff had standing to sue. To do otherwise would be to bar the people of Nevada  
27 from seeking recourse in state courts whenever the Legislature has provided statutory rights that  
28 are broader than constitutional standing would allow." *Stockmeier v. NDOC*, 122 Nev. 385,  
393, 135 P.3d 220, 226 (2006). NRS 233B.110(1) is such a statute and should be liberally  
construed to provide Plaintiffs standing. Apart from NRS 233B.110(1), Plaintiffs have third

1 party standing to sue because they have a legally cognizable interest in the dispute. The dispute  
2 exists on two issues, the visitation interval and the regulation, and the Commission's failure to  
3 comply with its statutory duty to establish a management plan for fur trapped animals, to include  
4 reasonable standards for trap setting and trap vigilance. The non-target animals cannot sue.  
5 Plaintiffs seek to address the issue as humans who can access the courts. Plaintiffs have a direct  
6 interest in the dispute. Wildlife is part of the bounty of the State enjoyed by its citizens, and  
7 Defendants are vested with the obligation to be good stewards of it. Plaintiffs are interested in  
8 the protection of wildlife and thus in the agencies named herein adhering to their obligations.  
9 Molde is a lifelong advocate for this cause. Molde Declaration. Smith is too, and his  
10 foundation has worked hard on trapping issues, including the recent controversies involving the  
11 black bear trappings. Verified Complaint at para. 3 . Both are avid observers of wildlife.  
12 *Id.*; *Sierra Club v. Morton*, 405 U. S. 727, 734, 92 S.Ct. 1361 (1972) (desire to observe an animal  
13 species is a cognizable interest for purposes of standing); *see also Animal Welfare Inst. v. Martin*,  
14 623 F.3d 19 (1st Cir. 2010) (plaintiffs had standing to bring litigation based on claims that injury  
15 or death to the lynx, as a result of the state's failure to prohibit trapping devices, which would  
16 likely result in the individual's lessened enjoyment in recreation in the area); *Jayne v. Rey*, 780  
17 F. Supp. 2d 1099 (D. Idaho 2011) (potential harm to two endangered species, grizzly bears and  
18 caribou, would cause injury to plaintiff who would have less enjoyment in visiting the area).  
19 They frequent the areas where trapping occurs in Nevada for aesthetic and recreational purposes.  
20 *Id.* There, they have endeavored and will continue to endeavor to view the wildlife present,  
21 including many of the non-target species, in order to appreciate its wonder and to study the  
22 ways and habits of the different wild species that habitate Nevada. *Id.* Molde has been active  
23 for years on trapping regulation and legislation, lobbying the Legislature and the Commission  
24 annually, and taking on an role of advocating more stringent trap visitation through statute and  
25 regulation. Molde Declaration. His efforts were thwarted by the improper delegation  
26 addressed by this suit, and his and Smith's opportunities to enjoy the presence of non-target  
27  
28

1 animals in the wild were also impeded. The Plaintiff Foundation is dedicated to preservation  
2 of wildlife. Verified Complaint. The Foundation acts to do this for the benefit of the public. *Id.*  
3 Plaintiffs also have a further interest in ensuring the Commission acts under legislation that  
4 follows the Nevada Constitution.

5 Plaintiffs' proffered data shows the likelihood of injury to non-target species is not  
6 speculative. *Los Angeles v. Lyons*, 461 U.S. 95, 102, 75 L. Ed. 2d 675, 103 S. Ct. 1660 (1983)  
7 ("Past wrongs were evidence bearing on whether there is a real and immediate threat of repeated  
8 injury"). With approximately 1,300 licensed trappers in Nevada (Molde Declaration) trapping  
9 in the upcoming season is assured, and the data shows the sustained likelihood that high numbers  
10 of non-target animals will be trapped. The woeful harm that will befall them can be averted by  
11 a regulation and management plan that results from a constitutional delegation of rule making  
12 power and consideration of all of the data and information about injury, including maiming,  
13 broken teeth, dehydration, and death.

14 The requested relief has a substantial chance of creating a setting for constitutional rule  
15 making which would lessen the harm to the non-target animals. There is thus a likelihood that  
16 a court ruling in Plaintiffs' favor would remedy the injury. *Duke Power Co. v. Carolina*  
17 *Environmental Study Group, Inc.*, 438 U.S. 59, 74-75, 57 L. Ed. 2d 595, 98 S. Ct. 2620, and n.  
18 20 (1978) (plaintiff must show that relief requested will redress the injury). For example, a  
19 preliminary injunction halting the trapping season pending resolution of the merits of Plaintiffs'  
20 contentions about the trap check interval regulation will prevent the interim harm to non-target  
21 animals and will also serve to prevent the enforcement of a void regulation. Requiring the  
22 Commission to develop a fur trapping management plan, as it is required to do, to include  
23 reasonable standards for trapping, including trap visitation, will lessen the harm to non-target  
24 animals.

25 Thus, the third prong of the *Doe v. Bryan* test is met—Plaintiffs have established a legally  
26 protected interest, or standing, not only under NRS 233B.110(1), but also as third parties  
27  
28



1 interested in the issues and the requested relief. Declaratory relief is thus appropriate. The  
2 Court should issue a preliminary determination that Plaintiffs’ positions on the regulation are  
3 valid, as discussed below in examining the likelihood of success element of the requirements for  
4 injunctive relief.

5 **Standards for injunctive relief**

6 Article 6, Section 6 of the Nevada Constitution vests district courts with the power to  
7 issue injunctions. As an aid to its authority under the Declaratory Judgments Act, this Court  
8 has the power to issue supplemental relief. NRS 30.100; *Southern Nev. Homebuilders Ass’n v.*  
9 *City of N. Las Vegas*, 112 Nev. 297, 913 P.2d 1276 (1996)(this includes a motion for injunctive  
10 relief to prohibit enforcement of an invalid ordinance), overruled on other grounds, *Sandy Valley*  
11 *Assocs. v. Sky Ranch Estates Owners Ass’n*, 117 Nev. 948, 35 P.3d 964,(2001). A preliminary  
12 injunction is available when a party seeking the injunction can demonstrate that the nonmoving  
13 party's conduct, if allowed to continue, will cause irreparable harm for which compensatory relief  
14 is inadequate and that the moving party has a reasonable likelihood of success on the merits.  
15 *Attorney General v. NOS Communications*, 120 Nev. 65, 67, 84 P.3d 1052, 1053 (2004); *Dixon*  
16 *v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029 (1987).

17 The violation of the Constitution constitutes irreparable harm. *Elrod v. Burns*, 427 U.S.  
18 347, 373, 96 S.Ct. 2673 (1976)(denial of First Amendment Right); *Dehne v. Avani*, 219  
19 F.Supp 2d 1096, 1111 (D. Nev. 2001)(noting same for due process.). The regulation violated  
20 the separation of powers doctrine. An ongoing denial of a constitutional right is irreparable  
21 harm per se. *Ottenheimer v. Real Estate Div.*, 91 Nev. 338, 342, 535 P.2d 1284, 1285 (1975);  
22 *see also Fritz Hansen A/S v. District Court*, 116 Nev. 650, 658 (2000) (discussing nature of  
23 “irreparable” harm). *Ottenheimer* reversed the district court’s denial of a preliminary  
24 injunction because it “would force appellants to leave established, intrinsically lawful  
25 employment, thereby sustaining substantial irreparable injury if the legislation [requiring  
26 licensure to sell certain real estate] indeed is unconstitutional.” Here,  
27  
28

1 the harm to non-target animals will begin to occur with the commencement of the trapping season  
2 in October of 2014. Absent the requested relief, traps will be visited less frequently and the  
3 non-targeted animals will thus suffer longer than they otherwise would, or die in the traps, or  
4 harm themselves escaping from the traps. If the regulation is indeed unconstitutional, this  
5 irreparable injury could be avoided by a preliminary injunction, as would the irreparable injury  
6 of ongoing enforcement of an unconstitutional regulation.

7 Turning to likelihood of success, the statute leading to the regulation should be examined.  
8 NRS 503.570(3) provides:

9 The Commission shall adopt regulations setting forth the frequency of which a  
10 person who takes or causes to be taken wild animals by means of traps, snares, or  
11 other similar devices which do not, or are not designed to, cause immediate death  
12 to the mammals must visit a trap, snare, or similar device. The regulations must  
13 require the person to visit a trap, snare, other similar device at least once each 96  
14 hours. In adopting the regulations, the Commission shall consider requiring a  
15 trap, snare, other similar device placed in close proximity to a populated or heavily  
16 used area by persons to be visited more frequently than a trap, snare, or similar  
17 device which is not placed in close proximity to such an area.

18 The legislature has thus delegated to the Commission the authority to determine the  
19 frequency of trap visitation in Nevada. Because the Commission is part of the executive branch,  
20 the separation of powers doctrine prevents it from encroaching upon the powers of the legislative  
21 branch. Nev. Const. art. 3, §1. The non-delegation doctrine prohibits the legislative branch  
22 from delegating its power to the executive branch.

23 Although the legislature may not delegate its power to legislate, it may delegate the  
24 power to determine the facts or state of things upon which the law makes its own  
25 operations depend. Thus, the legislature can make the application or operation of a statute  
26 complete within itself dependent upon the existence of certain facts or conditions, the  
27 ascertainment of which is left to the administrative agency. In doing so the legislature  
28 vests the agency with mere fact finding authority and not the authority to legislate. The

1 agency is only authorized to determine the facts which will make the statute effective.  
2 Such authority will be upheld as constitutional so long as suitable standards are  
3 established by the legislature for the agency's use of its power. These standards must be  
4 sufficient to guide the agency with respect to the purpose of the law and the power  
5 authorized. Sufficient legislative standards are required in order to assure that the agency  
6 will neither act capriciously nor arbitrarily.

7 *Sheriff v. Luqman*, 101 Nev. 149, 153-54 , 697 P.2d 107, 110 (1985). Here, the legislature  
8 entered the field of wildlife management and in particular, in this case, the trap visitation interval.  
9 The legislature did not enact a maximum visitation period of 96 hours. It set that as the  
10 maximum *for the regulation*. It then delegated to the commission the authority to enact a  
11 different maximum. It thus delegated to the Commission the authority to legislate the statewide  
12 visitation requirement. This violates the separation of powers.

13 No guidelines or criteria were provided other than that the Commission must make the  
14 maximum at least 96 hours and that it should consider “populated” and “heavily used” areas.  
15 The legislature thus abdicated its lawmaking function to an administrative agency and did so  
16 without clear guidance as to how to make the determination. This violates the separation of  
17 powers doctrine.

18 This was not a delegation to engage in fact finding that would effect the application of  
19 the statute. In *Luqman, supra*, the legislature delegated to the agency the determination of  
20 which drugs were to be designated as controlled substances. The Court held this was not a  
21 delegation of legislative power but rather authorization to engage in fact finding upon which the  
22 criminal sanction of the statute would apply. The statute at issue here did more than this. It  
23 authorized the Commission to vary the legislative maximum visitation period. It authorized the  
24 Commission to legislate a more stringent visitation period, not to find facts that would determine  
25 how a legislative enactment would apply. Therefore, the statute violates the separation of  
26 powers doctrine and this renders the resulting regulatory action by the Commission void.  
27 Accordingly, the Court should declare preliminarily that, based upon the showing on this motion,  
28

1 there is a reasonable likelihood of success on the merits sufficient to warrant preliminary  
2 injunctive relief.

3 *Lapinski v. State*, 84 Nev. 611, 446 P.2d 645 (1968), provides an example of improper  
4 delegation of legislative power. There the legislature defined the crime but not the punishment,  
5 and delegated the punishment to be sought to the district attorneys in the State. The court  
6 determined that the legislature could not delegate this function. 84 Nev. 611, 613-4, 446 P.2d  
7 at 646-47. Here, the legislature defined the maximum regulatory standard, but delegated the  
8 power to legislate the standard to the Commission. That delegation cannot stand constitutional  
9 scrutiny.

10 Indeed, our Court has recognized that the separation of powers is fundamental in our  
11 system of government. *Galloway v. Truesdell*, 83 Nev. 13, 19, 422 P.2d 237, 242 (1967). In  
12 that case, the court struck down a statute that vested district judges with the authority to determine  
13 the qualifications and licensing of persons who could legally perform marriage ceremonies, as  
14 that determination was a legislative function.

15 The regulation at issue requires, with small exceptions, persons to visit a trap, snare, or  
16 similar device at least once each 96 hours. In these small exceptions, the Commission  
17 delineated areas requiring more timely visitations around Las Vegas and Reno. The  
18 Commission made no findings as to why the environs around areas of other counties would not  
19 benefit similarly, and made no distinction as to why the environs of other portions of Nevada are  
20 not situated similarly to Reno and Las Vegas from a regulatory standpoint. This proves the  
21 point that the guidelines or criteria set forth by the legislature are vague and ambiguous. The  
22 Legislature did not define “populated or heavily used area”. Gabbs, is “populated”, yet the  
23 Commission gave no consideration as to whether its environs should be subject to a more  
24 frequent visitation requirement. Barrick Gold’s Cortez Mine in Elko County, the largest gold  
25 mine in the world, could be described as one of the most heavily used areas in the State, but the  
26 Commission did not consider whether its environs should be subject to a requirement of more  
27  
28

1 frequent visitation. The lack of guidelines let the Commission act in an arbitrary manner in  
2 determining geographic justifications for more stringent visitation periods. This violates the  
3 separation of powers doctrine.<sup>3</sup>

4 Thus, from several different standpoints, the regulation at issue violates the separation of  
5 powers doctrine, and thus Plaintiffs stand a substantial likelihood of success on the merits.  
6 Combined with the irreparable injury absent a preliminary injunction (enforcement of  
7 unconstitutional regulation and harm to non-target species), such relief is warranted.

8 Federal courts look to the relative hardships as a final part of the injunctive relief analysis,  
9 so Plaintiffs mention it as a precaution. The balancing of hardships weighs in favor of relief when  
10 a Constitutional infirmity may exist. *Ottenheimer, supra*. The public interest in protecting  
11 and preserving non-targeted wildlife is paramount to any minor inconvenience the relief might  
12 cause the Commission or NDOW.

13 There should be no bond because the State is a party. *See Dayberg Holdings Nevada,*  
14 *LLC v. Douglas County*, 115 Nev. 129, 144-5, 978 P.2d 311, 320-22 (1999) (no bond required  
15 for private party where State also sought relief). Here, Defendants/Respondents are State  
16 entities. Plaintiffs' purpose is to have the State regulation comply with the constitution and  
17 law. Each party has an interest in these issues to be determined. Defendants/Respondents will  
18 thus be beneficiaries of any relief in this case.

19 The amount of the bond is to be "*in such a sum the court deems proper.*" NRCPC  
20 65(c)(emphasis added). There is no risk of damages from issuance of a wrongful injunction,  
21 which is the purpose of posting a bond. As discussed above, this Court is positioned to award  
22 an injunction jurisdictionally and on the merits. No injunction would be wrongful. Thus, a

---

23  
24 3

25 It bears noting that the Legislature entered this area of trap visitation interval, demonstrating  
26 an intent to minimize suffering. As shown herein, a 96 hour period does not go far enough.  
27 The Legislature provided the Commission with the authority to go farther, but omitted  
28 adequate guidelines within which to do so.

1 bond should be forgiven.

2 Plaintiffs also seek relief as to the Commission’s failure to adopt broad and narrow  
3 policies relating to the management of fur trapped species, as required by NRS 501.181. The  
4 same equitable considerations weigh in Plaintiffs’ favor on this issue. In terms of irreparable  
5 harm, the Commission’s failure is a contributing factor to the plethora of non-target species  
6 caught in traps and the duration of their capture. The Commission’s failure is exacerbated when  
7 one understands that the intent behind NRS 501.181 appears in part to be to provide NDOW with  
8 the guidance it requires in enforcing the regulations promulgated by the Commission. The  
9 likelihood of success on this policy making issue is strong, as NRS 501.181 begins, “The  
10 Commission *shall*. . .” (Emphasis added). The same analysis as above for the balancing of  
11 interests applies, as does the request for no bond. Thus, the Court should declare the  
12 Commission remiss in its policy making obligation and enjoin it to go to work on complying  
13 with that statutory requirement.

14 Conclusion

15 Based upon the foregoing, the motion should be granted and a preliminary injunction  
16 should issue enjoining enforcement of the regulation and the fur trapping seasons until further  
17 order of the Court, and enjoining the Commission to engage in policy making as it relates to fur  
18 trapped species, target and non-target.

19 The undersigned affirms the preceding document does not contain the Social Security  
20 Number of any person.

21 DATED August 28, 2014.

22 CAVANAUGH-BILL LAW OFFICES, LLC  
23 401 Railroad Street, Suite 307

24 Elko, NV 89801

25  
26 By: \_\_\_/s/Julie Cavanaugh-Bill \_\_\_\_\_  
27

JULIE CAVANAUGH-BILL  
NV Bar No: 11533

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28