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11 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
12 **IN AND FOR THE COUNTY OF WASHOE**

13 MARK SMITH, DONALD A. MOLDE
14 AND THE MARK SMITH FOUNDATION,

15 Plaintiff/Petitioners,

16 vs.

17 STATE OF NEVADA, ex rel., THE
18 NEVADA BOARD OF WILDLIFE
19 COMMISSIONERS, STATE OF
20 NEVADA, ex rel., ITS DEPARTMENT OF
21 WILDLIFE,

22 Defendants/Respondents.

CASE NO.:

DEPT. NO.:

23 VERIFIED COMPLAINT AND FOR DECLARATORY AND INJUNCTIVE

24 RELIEF

25 COMES NOW Plaintiffs/Petitioners above named, as and for their complaint
26 against Defendants/Respondents, allege as follows:

27 1. NRS 501.100 provides:

28 Wildlife in this State not domesticated and in its natural habitat is part of the
natural resources belonging to the people of the State of Nevada.

The preservation, protection, management and restoration of wildlife within
the State contribute immeasurably to the aesthetic, recreational and economic
aspects of these natural resources.

1 2. Plaintiffs Mark Smith and Donald A. Molde are individuals and residents of
2 the State of Nevada. Plaintiff The Mark E. Smith Foundation is registered in Nevada as a
3 501(c) (3) foundation.

4 3. Plaintiffs have a direct interest in the dispute. Wildlife is part of the bounty
5 of the State enjoyed by its citizens, and Defendants are vested with the obligation to be
6 good stewards of it. Plaintiffs are interested in the protection of wildlife and thus in the
7 agencies named herein adhering to their obligations. Molde is a lifelong advocate for this
8 cause. Smith is too, and his foundation has worked hard on trapping issues, including the
9 recent controversies involving the black bear trappings. Both are avid observers of
10 wildlife. They frequent the areas where trapping occurs in Nevada for aesthetic and
11 recreational purposes. There, they have endeavored and will continue to endeavor to view
12 the wildlife present, including many of the non-target species, in order to appreciate its
13 wonder and to study the ways and habits of the different wild species that inhabit Nevada.
14 Molde has been active for years on trapping regulation and legislation, lobbying the
15 Legislature and the Commission annually, and taking on a role of advocating more
16 stringent trap visitation through statute and regulation. His efforts were thwarted by the
17 improper delegation addressed by this suit, and his and Smith's opportunities to enjoy the
18 presence of non-target animals in the wild were also impeded. The Plaintiff Foundation is
19 dedicated to preservation of wildlife. The Foundation acts to do this for the benefit of the
20 public. Plaintiffs also have a further interest in ensuring the Commission acts under
21 legislation that follows the Nevada Constitution.

22 4. Defendant State of Nevada, ex rel., the Nevada Board of Wildlife
23 Commissioners (hereafter "the Commission") consists of nine members appointed by the
24 Governor of the State of Nevada and is charged with establishing policies related to
25 wildlife in the State of Nevada pursuant to NRS 501.105 et seq. Defendants/Respondent
26 State of Nevada, ex rel., Nevada Department of Wildlife is a State agency charged with
27 administering and enforcing laws concerning wildlife. It is named as a necessary party.

28 5. This Court has the jurisdiction to review the adequacy of an agency's
rulemaking under NRS 233B.110.

1 6. The Commission has failed and/or refused to carry out its statutory
2 obligations to preserve, protect, manage and restore wildlife within Nevada, which wildlife
3 belongs to Plaintiffs and all other residents of the State of Nevada. The Commissions
4 failures include but are not limited to the following particulars:

5 a. As provided by existing law, the Commission regulates the use of leg hold traps and
6 other types of traps and snares for capture of so-called “furbearing” animals in
7 Nevada which include among others: bobcats, foxes, coyotes, beaver and muskrat.
8 The Commission has determined at its August 16, 2014 meeting that, with limited
9 exception, such traps and snares are to be visited by the trapper setting such devices
10 across Nevada but once every 96 hours (4 days), the maximum interval allowed by
11 Nevada law and the longest visitation interval in the United States apart from
12 Montana and Alaska. Such traps and snares are inherently non-selective and will
13 capture any wild animal, bird or domestic animal which contacts and triggers the
14 trap or snare. Data from the Nevada Department of Wildlife, over a recent span of 8
15 years, shows that unintended victims of such traps or snares (so-called “non-target
16 species”) number in the thousands, ranging from pack rats, rabbits, golden eagles
17 and domestic dogs and cats to mountain lions.

18 b. It is legal to trap bobcats (*lynx rufus*) in Nevada but not mountain lions (*puma*
19 *concolor*). Because of escalating fur prices, particularly for bobcat pelts (which
20 may exceed \$1000 per pelt), trappers vigorously pursue bobcats by use of leg hold
21 traps and snares in all parts of Nevada. Since mountain lions and bobcats live in
22 similar habitat and have similar habits, mountain lions frequently encounter such
23 devices. In doing so, mountain lions suffer loss of toes, foot pad injuries, other leg
24 and foot injuries, broken and/or missing teeth (from biting the trap or attached
25 chain), and/or combinations of such injuries. Some mountain lions have died from
26 starvation due to foot injuries sustained from trap encounters which render the
27 animals unable to successfully pursue prey. Mountain lions legally hunted and
28 killed in Nevada are required to have a “check-in” inspection by Nevada
Department of Wildlife officials. Such inspections show that about 1 of every 6

1 mountain lions legally killed by hunters show evidence of trap or snare injuries.
2 These injuries are not seen in mountain lions living in states where leg hold traps
3 and snares are not used. Plaintiff's information and belief is that there are many
4 mountain lions in Nevada, belonging to Plaintiffs and all citizens of Nevada that
5 have been injured, killed, and/or have died of starvation because of such traps and
6 snares and will continue to be so injured and killed without protective action by the
7 Commission.¹

- 8 c. The above example of unintentional injury and death suffered by mountain lions
9 applies equally to all other of the thousands of non-target wildlife and domestic
10 animals captured in traps and snares over a decade. Each of these non-target
11 species, whether a simple pack rat, a golden eagle, or a domestic dog, can suffer
12 similar harm. All affected wildlife belong to the public as part of the public trust
13 doctrine as specified in a series of U.S. Supreme Court cases (i.e., *Hughes v.*
14 *Oklahoma; Callopy v. Wildlife Commission; O'Brien v. Wyoming*) and pursuant to
15 NRS 501.100.
- 16 d. Traps and snares are not benign. Injuries that occur to unintentional victims of
17 these devices include but are not limited to: leg and foot injuries, missing toes and
18 claws, broken or missing teeth, dislocated joints, broken bones, permanent crippling
19 paw injuries and others. The longer a trap or snare victim resides in the device
20 before release, the more likely that injury and/or death will occur. Such animals can
21 also die sooner from causes such as predation by other animals or exposure.
22 Regardless, the quicker a non-target victim of a trap or snare is released, the less
23 chance it has for injury and/or death and the better its chance for survival.

24
25 ¹ List of non-target species caught by trappers and reported to the Nevada Department of
26 Wildlife: rabbit, domestic dog, domestic cat, mountain lion, other, livestock, game,
27 badger, bear, bobcat, chipmunk, ermine, feral pig, ground squirrel, pack rat, pond turtle,
28 skunk, golden eagle, hawk, owl, blue heron, chukar, coot, duck, goose, magpie, quail, rail,
raven.

1 6. The Commission is obligated by law to adopt regulations setting the time
2 interval within which trappers must visit their traps and snares and release the animals
3 therefrom. Such deliberation by the Commission should take into account its duty to
4 protect non-target species from injury and/or death from accidental trap and snare
5 encounters. The Commission has failed in this obligation in that it has placed the
6 convenience of trappers over consideration of a need to protect wildlife and domestic
7 animals from unnecessary harm, injury, suffering and death.

8 7. NRS 503.570 provides:

9 1. A person taking or causing to be taken wild mammals by means of traps, snares
10 or similar devices which do not, or are not designed to, cause immediate death to
11 the mammals, shall, if the traps, snares or similar devices are placed or set to
12 take mammals, visit or cause to be visited each trap, snare or similar device at a
13 frequency specified in regulations adopted by the Commission pursuant to
14 subsection 3 during all of the time the trap, snare or similar device is placed set
15 or used to take wild mammals, and remove therefrom any mammals caught
16 therein.

15 ***

17 3. The Commission shall adopt regulations setting forth the frequency at which a
18 person who takes or causes to be taken wild mammals by means of traps, snares
19 or similar devices which do not, or not designed to, cause immediate death to the
20 mammals must visit a trap, snare or similar device. The regulations must
21 require the person to visit a trap, snare or similar device at least once each 96
22 hours. In adopting the regulations, the Commission shall consider requiring a
23 trap, snare or similar device placed in close proximity to a populated or heavily
24 used area by persons to be visited more frequently than a trap, snare or similar
25 device which is not placed in close proximity to such an area.

26 8. The Commission, by its actions and inactions, has ignored dramatic non-
27 target data relative to the numbers of non-target animals and birds which were captured,
28 injured and died in traps and snares. Said data was collected by the Nevada Department of
Wildlife from licensed trappers who appeared to respond to the mandatory self-report in a
full and complete manner. Plaintiffs' information and belief is that other trappers did not

1 fill out the self-report in an honest manner, and a significant segment of licensed trappers
2 failed to respond at all. Plaintiff's information and belief is that the available non-target
3 data is but the "tip of the iceberg" and that the true extent of non-target victims is
4 unknown. By failing to consider said data collected by the Nevada Department of
5 Wildlife, the Commission, by promulgating a 96-hour trap visitation interval, virtually
6 state-wide, has maintained the very conditions under which non-target animals and birds
7 have been adversely impacted over the past decade and has failed to offer, or even to
8 consider, other reasonable forms of protection for such animals and birds.

9 9. By using the terms "populated" and "heavily used" in enacting NRS
10 503.570, the legislature, in Plaintiffs' information and belief, recognized a perceived
11 public safety threat expressed by members of the public who are concerned about the
12 safety and well-being of children, pets, other domestic animals, and financial and
13 personal risk to themselves should they encounter a circumstance where an unintended
14 victim is caught in a trap or snare and where the member would feel obligated or
15 compelled to extract the victim from the trap or snare without adequate knowledge or
16 equipment to insure a safe release and to avoid personal injury and need for subsequent
17 medical or veterinarian treatment.

18 10. Plaintiffs recognize that trapping of furbearing mammals using leg hold traps
19 and other kinds of traps and snares is a legal means of killing wildlife in Nevada and this
20 Complaint does not seek to make such trapping illegal. This Complaint, based upon the
21 above, and the additional allegations below, seeks relief to require the Commission
22 properly to undertake its obligations to adopt regulations, considering all data collected by
23 its staff at the Nevada Department of Wildlife as well as concerns expressed by members
24 of the non-trapping public about such data and practices, as it impacts wildlife as well as
25 public safety, so as to shorten the 96 hour trap visitation interval and take other measures
26 to afford target and non-target wildlife species and domestic animals additional protections
27 against grievous and unnecessary suffering and harm from such devices. The Complaint
28 also seeks interim relief in the form of a declaration that the Commission's 96 hour trap
visitation interval is ineffective for the reasons above, with a corresponding injunction

1 postponing the trapping season (beginning October, 2014 for most furbearers; beginning
2 December, 2014 for bobcats) until final decision herein and/or further order of the Court.

3
4 **FIRST CLAIM FOR RELIEF**

5 11. Plaintiffs refer to and by such reference incorporates herein each, every, and
6 all averments contained in paragraphs 1-10 hereinabove as though fully set forth at this
7 point.

8 12. The Commission is obligated by law to set forth reasonable regulations for
9 the preservation, protection, and management of all wild animals and birds in the State of
10 Nevada, including the above-mentioned “non-target” animals and birds. The Commission
11 has failed and/or refused to do so. In such failure and refusal, the Commission has also
12 ignored and/or not properly considered the data supplied by the Nevada Department of
13 Wildlife as to damage, injury and death suffered by non-target wildlife and domestic
14 animals in the State of Nevada when such are captured in leg hold and other traps and
15 snares intended only to capture targeted furbearing mammals.

16 13. Plaintiffs are damaged by this failure and refusal of the Commission to act to
17 reasonably protect and preserve said non-target animals and birds belonging to Plaintiffs
18 and other people in the State of Nevada.

19 14. Plaintiffs are entitled to an award of costs of suit and a reasonable amount as
20 and for attorney fees, including for acting as a private attorney general on behalf of the
21 State of Nevada and its citizens.

22 **SECOND CLAIM FOR RELIEF**

23 15. Plaintiffs refer to and by such reference incorporates herein each, every and
24 all averments contained in paragraphs 1-14 hereinabove as though fully set forth at this
25 point.

26 16. The 2013 Nevada Legislature enacted the last sentence of NRS 503.570 (3),
27 to wit:

28 In adopting the regulations, the Commission shall consider requiring a trap, share or
similar device to be visited more frequently than a trap, snare or similar device
which is not placed in close proximity to such an area.

1 17. By such enactment, the Nevada Legislature transferred authority to regulate
2 the trap visitation interval from itself to the Commission, while maintaining 96 hours as
3 the maximum allowable visitation interval per Nevada statutes. Prior to such enactment,
4 the trap visitation interval was required by the Legislature to be 96 hours, statewide. After
5 such enactment, the Commission was given the authority to shorten the trap visitation
6 interval.

7 18. Rules and regulations governing wildlife management in Nevada are exempt
8 from Nevada’s animal cruelty statutes per NRS 574.200. Nonetheless, the Legislature has
9 seen fit to mandate a trap visitation interval for decades, suggesting that the welfare of
10 trapped animals does have a place in regulation despite the exemption from animal cruelty
11 laws. By enacting NRS 503.570 giving the Commission the authority to shorten the trap
12 visitation interval, the Legislature has acknowledged Plaintiffs’ and the public’s concerns
13 about the importance of a mandated visitation period and in particular the length of the
14 visitation interval and its potential to cause grievous harm to unintended victims of traps
15 and snares.

16 19. The terms “populated” and “heavily used” as presented in NRS 503.570
17 were concepts that lacked agreed-upon definitions and created considerable confusion for
18 the Commission and concerned public during deliberations regarding NRS 503.570.
19 Plaintiffs’ belief and information is that the Commission chose to take the narrowest and
20 unreasonable view of possible definitions of these terms and phrases in order to favor
21 trapper convenience over the welfare of non-target species. The delegation to the
22 Commission as set forth in NRS 503.570 (3) to “consider” a shorter trap visitation interval
23 in “populated” and “heavily used” areas without clarity or specificity of meaning was an
24 improper delegation of legislative power, prohibited by the Constitution of the State of
25 Nevada, including its separation of powers clause and structure.

26 20. Such delegation was improper because the Legislature failed to provide the
27 Commission with adequate guidelines or criteria for engaging in fact-finding that could
28 lead to a better regulation. This failure not only defeats the delegation, but renders the
regulation ineffective.

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4 THIRD CLAIM FOR RELIEF

5 21. Plaintiffs refer to and by such reference incorporates herein each, every, and
6 all averments contained in paragraphs 1-20 hereinabove as though fully set forth at this
7 point.

8 22. The Commission is obligated by law to develop plans for wildlife
9 management as the steward of Nevada’s wildlife. The Commission has failed to consider
10 or develop a plan to manage wildlife as it relates to trapping of non-target animals
11 (including domestic pets and other domestic animals) and has chosen to continue with the
12 default trap visitation requirement of 96 hours for nearly the entire state, insuring
13 unnecessary continued suffering, harm, injury and death for non-target species each and
14 every trapping season.

15 23. To Petitioners’ information and belief, the Commission has failed to develop
16 a plan to manage wildlife as it relates to trapping of non-target animals and birds due to
17 improper deference to the convenience of trappers without support within the law to show
18 that such deference to trappers and their inherently dangerous activity as practiced on
19 public lands within Nevada outweighs the concerns of the non-trapping public for the
20 welfare and safety of wildlife and domestic animals. The Commission devoted its
21 attention primarily to trapper concerns about hardships visiting trap lines during bad
22 weather, illness, vehicle problems, employment obligations and “threats” of trapping
23 closer to populated areas should the Commission see fit to shorten the trap visitation
24 interval. The Commission virtually ignored concerns about animal suffering, harm, injury
25 and death from trapper neglect while voicing an inability to understand the non-trapping
26 public’s concerns about animal suffering as it relates to trapping.

27 24. As most of the trapping of furbearing animals in Nevada by private trappers
28 occurs on public lands, a proper plan of wildlife management as it relates to trapping of
non-target animals and birds may require federal assessments and impact statements

1 related to the National Environmental Protection Act, the Endangered Species Act and
2 other potentially applicable federal laws and corresponding regulations. By failing or
3 refusing to undertake such a proper plan of wildlife management, the Commission has
4 avoided the need for such considerations of applicable federal law. Avoiding the
5 obligation to develop a plan avoids the need for such expensive undertakings.

6 FOURTH CLAIM FOR RELIEF

7 25. Plaintiffs refer to and by such reference incorporates herein each, every, and
8 all averments contained in paragraphs 1-14 hereinabove as though fully set forth at this
9 point.

10 26. A preliminary and permanent injunction is available to Plaintiffs as the
11 Commission's action and inaction, if allowed to continue, will cause irreparable harm to
12 Plaintiffs for which compensatory relief is inadequate. The Plaintiffs have a reasonable
13 likelihood of success on the merits. *Attorney General v. NOS Communications*, 120 Nev.
14 65, 67, 84 P.3d 1052, 1053 (2004); *Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029
15 (1987).

16 27. Article 6, Section 6 of the Nevada Constitution vests District Courts of
17 Nevada with the power to issue injunctions. Pursuant to NRS 30.030 and 30.040, this
18 Court has injunctive jurisdiction over the matter. Public entities can be enjoined if they
19 exceed their authority. *Reno v. Reno Newspapers, Inc.*, 105 Nev. 886, 890, 784 P.2d 974,
20 977 (1989).

21 28. Plaintiffs have no adequate remedy at law. The failures noted above are not
22 compensable by an award of monetary damages. The public interest will be served in the
23 event the Plaintiffs are successful herein.

24 WHEREFOR, Plaintiffs/Petitioners pray as follows:

25 1. For a Declaration that the delegation set forth in NRS 503.570 (3) for the
26 Commission to "consider" a shorter trap visitation period in certain areas without clear
27 definition or meaning of "populated" and "heavily used" and without adequate guidelines
28 or criteria is an improper delegation of legislative power and so the resulting regulation at
issue is void. Should the Court make this finding, Plaintiffs also request that the Court

1 enjoin the Commission from establishing further trapping season(s) until such time as the
2 legislature cures the inadequacy of its delegation.

3 2. For a Declaration that the action of the Commission at its August 16, 2014
4 meeting, keeping the maximum trap visitation interval at 96 hours statewide (with minor
5 exceptions), failed to meet its statutory duty to protect target and non-target wildlife
6 species and domestic animals from unnecessary suffering, harm, injury and death and so is
7 void, and enjoining the Commission from establishing further trapping season(s) until a
8 proper regulation is promulgated subject to this Court's review of the new regulation and
9 the process leading to its adoption.

10 3. For an Order requiring the Commission to hold such hearings as are
11 necessary to adopt a "trapping management plan" as it relates to trapping of target and
12 non-target wildlife species, domestic animals, and public safety, to include such elements
13 as (but not limited to): shorter trap visitation interval; standards for size, type, number,
14 trigger tension and other characteristics of traps and snares; setback requirements from
15 roads and public spaces for all forms of traps, trapper education, quotas; and other
16 reasonable measures to avoid or minimize suffering, harm, injury and death of said
17 animals and birds, and with Court approval of the completed "plan" before
18 implementation.

19 4. For an Order requiring the Commission to insure a fair balance of views on
20 any committee or planning group considering a "trapping management plan", to include
21 Plaintiffs and other members of the non-trapping public, so that trapper convenience is
22 balanced with the concerns of Nevadans who do not trap wildlife and who regard the well-
23 being, safety and protection of target and non-target wildlife species and domestic animals
24 as the proper priority.

25 5. For a preliminary injunction followed by a permanent injunction requiring
26 that the Commission stay the commencement of future furbearing animal trapping
27 season(s) until such time as the above mentioned hearings have been held, a "trapping
28 management plan" has been developed with participation by Plaintiffs and all other
concerned parties and has met with Court approval.

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6. For costs of suit and a reasonable amount as and for attorney fees.

7. For such other and further relief as this Court deems appropriate and proper.

The undersigned does hereby affirm the preceding document does not contain the Social Security number of any person.

Dated this ____ day of August, 2014

CAVANAUGH-BILL LAW OFFICES, LLC
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By: _____
JULIE CAVANAUGH-BILL
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