

STATE OF INDIANA)	LA PORTE SUPERIOR COURT #1
) SS	
COUNTY OF LA PORTE)	
 CENTER FOR WILDLIFE)	
ETHICS, INC.)	
)	
Plaintiff,)	CAUSE NO. 46D01-1711-PL-001931
)	
vs.)	
)	
CAMERON F. CLARK, in his)	
official capacity as the Director)	
of the Indiana Department of)	
Natural Resources,)	
)	
Defendant.)	

**PLAINTIFF'S FIRST AMENDED VERIFIED COMPLAINT
FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

Plaintiff, by and through counsel, pursuant to Indiana Trial Rule 15(A) hereby submits this First Amended Verified Complaint for Declaratory Judgment and Injunctive Relief against Defendant, Cameron Clark, in his official capacity, Director of the Indiana Department of Natural Resources. The parties to the Amended Complaint are the same and the Plaintiff seeks the same equitable relief it sought previously pursuant to T.R. 57 (Declaratory Judgment), T.R. 65 (Injunctive Relief) and Indiana Code §§ 34-14-1-1, et seq., §§ IC 34-26-1-1.

I. INTRODUCTION

For the past three consecutive legislative sessions, 2016, 2017, and now 2018, the Indiana General Assembly considered rifle-hunting deer on public property and deemed the

matter an “emergency”¹ in the 2018 version of the statute at issue in this challenge. In 2016, the legislature enacted Indiana Natural Resources Code, § 14-22-2-8, short-titled, “Deer hunting; permitted firearms; required report”.² In 2017, the legislature considered the same issues, rifle-hunting on public versus private land but ultimately amended only the equipment provisions of the statute. In 2016 and 2017 the statute at issue, expressly limited Defendant Indiana Department of Natural Resources’ (IDNR) statutory authority; the agency could permit rifle-hunting deer only on “privately owned” land. Throughout all the iterations, the statute retained its sunset clause and expires June 30, 2020.

In 2018, the legislature made significant changes to IC § 14-22-2-8 and abolished the private property limitation, EHB 1292, Section (6) provides,

¹ Ind. Code § 34-7-6-1 Defines the term “emergency”.

IC § 34-7-6-1 Emergency extension of time; applicability

Sec. 1. This chapter applies to a proceeding:

- (1) pending before a court, a body, or an official, that exists under the constitution or laws of Indiana;
- (2) in which certain limitations of time are or may be fixed by law or rule for doing any acts in the proceeding; and
- (3) if an emergency exists or arises by reason of:
 - (A) war;
 - (B) insurrection;
 - (C) pestilence; or
 - (D) act of God;

which prevents the performance of an act that is essential to conserve substantial rights.

² The pertinent provision of the 2016-17 versions of IC § 14-22-2-8, subsection (b) stated, “A hunter may use a rifle during the firearms season to hunt deer subject to the following: (1) The use of a rifle is permitted only on *privately* owned land (emphasis added).”

SECTION 6. IC 14-22-2-8, AS AMENDED BY P.L.195-2017, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017 (RETROACTIVE)]: Sec. 8. (a) This section applies to a hunting season beginning after June 30, 2016, and ending before January 1, 2020.

(b) A hunter may use a rifle ~~during the firearms season~~ to hunt deer **on privately owned land** subject to the following:

(1) The use of a rifle is permitted ~~only on privately owned land.~~
during hunting seasons established by the department.

~~(2) The rifle must have a barrel length of at least sixteen (16) inches.~~

~~(3) (2)~~ (2) The rifle must be chambered for a cartridge that fires a bullet that is two hundred forty-three thousandths (.243) of an inch in diameter or larger.

~~(4) (3)~~ (3) The rifle must fire a cartridge that has a minimum case length of one and sixteen-hundredths (1.16) inches, but is no longer than three (3) inches.

~~(5) (4)~~ (4) A hunter may not possess more than ten (10) cartridges for the rifle while hunting deer under this section.

~~(6) (5)~~ (5) The rifle must meet any other requirements established by the department.

(c) The use of a full metal jacketed bullet to hunt deer is unlawful.

(d) The department shall report on the impact of the use of rifles to hunt deer under this section to the governor and, in an electronic format under IC 5-14-6, the general assembly before February 15, 2020.

(e) The department may adopt rules under IC 4-22-2 to authorize the use of rifles on public property.

The express language delegates broad legislative authority to Defendant to permit rifle-hunting on all Indiana's "public property" without exception. The term "public property" is so broad on its face that, standing alone, it fails to provide an "intelligible principle"³ to guide the

³ *Dep't of Transp. v. Ass'n of Am. Railroads*, 575 U.S. ____ (2015) (Slip. Op. No. No. 13-1080, pp. 6-10, Mar. 9, 2015) (rev'd and remanded, other procedural history omitted).
https://www.supremecourt.gov/opinions/14pdf/13-1080_f29g.pdf

Congress passed the Passenger Rail Investment and Improvement Act in 2008 granting Amtrak and the Federal Railroad Administration (FRA) joint authority, with input from the Surface Transportation Board (STB), to issue "metrics and standards" to address the performance and scheduling of passenger railroad services. In 2010, Amtrak and the FRA issued metrics and standards to address Amtrak's performance and delays, many attributable to private entities, the railroads whose tracks Amtrak used for its trains. The Association of American

defendant in properly implementing the grant of legislative power.⁴ A legislative delegation may be unconstitutional if it is overbroad and fails to provide the agency with clarity and guidance by using such sweeping, general terms as "public property".

A court owes no deference to an agency when determining if the legislature delegated power to the agency to define a term of its enabling legislation when it is overly broad.⁵ Here, the enabling statute is so broad on its face that it encompasses all public property in the State of Indiana. Furthermore, in this case, the court owes the agency no deference as a matter of record.

Railroads filed suit seeking a declaration that Amtrak and the FRA's action was unconstitutional and to enjoin FRA and others from implementing the metrics and standards.

To support the injunction, the Association argued the metrics/standards violated the non-delegation doctrine and separation of powers principle by placing legislative and rulemaking authority in the hands of a private entity (Amtrak) who participates in the very same industry it helps to regulate. The Association also argued that the metrics and standards violate the federal due process clause (Fifth Amendment) by vesting the coercive power of the government in a private party, Amtrak. The lower court's ruling hinged on the finding that Amtrak is a private corporation. The court ruled FRA's act improperly delegated legislative authority to a private entity and thereby violated the non-delegation doctrine and the principles of separation of powers. The Supreme Court vacated the lower court's ruling and remanded the case based on the finding that Amtrak is a governmental entity and not a private interest for purposes of determining the validity of its metrics/standards.

⁴ *Id. See also, 175 F.3d 1027 (D.C. Cir.), modified per curiam, 195 F.3d 4 (D.C. Cir. 1999), rev'd sub nom. Whitman v. Am. Trucking Ass'ns, 121 S. Ct. 903 (2001).* In *Whitman*, the lower court and DC Circuit relied on the non-delegation doctrine to determine that the agency (EPA) interpreted its enabling legislation (the Clean Air Act) in a manner that rendered the Act an unconstitutional delegation of legislative powers. The agency's rule for national ambient air quality was so broad that it failed to develop an "intelligible principle" for guiding its own decisions in setting air quality standards. The court reasoned the EPA interpreted the statute as if Congress commanded the agency to select "big guys," and EPA announced that it would evaluate candidates based on height and weight but failed to specify what height or weight would meet the standard. Accordingly, every court to rule on the issue remanded the case to the EPA with directions to establish a principle to define and limit the agency's discretion.

⁵ *City of Arlington, TX v. F.C.C.*, 569 U. S. __ (2013) (Slip Op. Nos. 11-1545-47, pp. 15-17, May 20, 2013). https://www.supremecourt.gov/opinions/12pdf/11-1545_1b7d.pdf

The Defendant's interpretations of IC § 14-22-2-8 were inconsistent with each other which means they are necessarily at odds with the design and structure of the statute.⁶

Ind. Code § 14-22-2-8 fails the intelligible principle standard unless state parks and historic sites are excluded from the definition of "public property" for purposes of granting private hunting license-holders access to those lands. Ind. Code § 14-22-6-13, "Controlled hunts in state parks and historic sites"⁷ allows the IDNR to manage animals on those properties by means that could include rifle-use or "hunting" but only if the statutory conditions have been met. IDNR's role as steward is at its zenith when managing state parks and historic sites, the properties of greatest value and use to the non-hunting public.

⁶ Pl. Reply to Def. Response to Pl. Mot. For PI and TRO, p. 5-9, n. 5 (filed Jan. 9, 2018). Defendant stated, "Due to recent legislation [I.C. 14-22-2-8]...hunters can no longer use rifles when hunting deer on public land. 'Public land' includes both state and federal property." IDNR Daily Digest Bulletin, "Important Corrections to Indiana Hunting & Trapping Guide", Oct. 12, 2017. (Pl. Ex. 4 at 12/27/17 Evidentiary Hearing.)

Less than three weeks later, Defendant completely changed its position, "Rifle cartridges that were allowed in previous years on public lands for deer hunting are allowed on public land again this year during the deer firearms season, the reduction zone season (in zones where local ordinances allow the use of a firearm) special hunts on other public lands such as State Parks and National Wildlife Refuges, and special antlerless season." IDNR Daily Digest Bulletin, "Important Corrections to Indiana Hunting & Trapping Guide", Nov. 3, 2017. (Pl. Ex. 4 at the Dec. 27, 2017 hearing.).

⁷ IC § 14-22-6-13 "Controlled hunts in state parks and historic sites". Sec. 13. If the director:

(1) determines that a species of wild animal present within a state park or historic site poses an unusual hazard to the health or safety of one (1) or more individuals;

(2) determines, based upon the opinion of a professional biologist, that it is likely that:

(A) a species of wild animal present within a state park or historic site will cause obvious and measurable damage to the ecological balance within the state park or historic site; and

(B) the ecological balance within the state park or historic site will not be maintained unless action is taken to control the population of the species within the state park or historic site; or

(3) is required under a condition of a lease from the federal government to manage a particular wild animal species;

the director shall authorize the taking of a species within the state park or historic site under rules adopted under IC 4-22-2.

By express terms, the “Controlled Hunt” statute and related legislation do not allow IDNR to transfer or delegate the agency’s stewardship and management duties to private hunting licensees/interests or private actors.⁸ Ind. Code § 14-11-1-2, “Cooperation with public or private entities or individuals”, authorizes the defendant to “cooperate” with private individuals but only to the extent the Natural Resources Commission (NRC) deems necessary or “advantageous” to effectuate articulated statutory goals.⁹ Defendant’s statutory authority to issue hunting licenses to private individuals grants licensees the privilege to “hunt” specified in the license. The “privilege” allows the licensee to engage in the conduct vis a vis the species specified in the license that the licensee could not engage in otherwise -- without the license.

Defendant’s enabling legislation empowers Defendant to grant licenses to private individual hunters and, significantly, tasks Defendant with policing the licensees’ conduct and use of their licenses. Ind. Code 14-11-1-6 delegates hunting-law enforcement duties to Defendant. Ind. Code §§14-22-2-3 et seq. tasks Defendant with managing and stewarding public property and the resources related to and living on that property. Defendant cannot delegate or transfer its enforcement and management to private interests and/or actors without coloring far outside the lines, exceeding its statutory authority and violating the principles of separation of powers, specifically the constitutional prohibition on government delegating its power to private interests.

⁸ *Dep’t of Transp. v. Ass’n of Am. Railroads*, 575 U.S. ____ (2015) (Slip. Op. No. No. 13–1080, pp. 6-10, Mar. 9, 2015) (rev’d and remanded, other procedural history omitted)

⁹ IC § 14-11-1-2 “Cooperation with public or private entities or individuals”. Sec. 2. The department may cooperate with:

- (1) a public or private institution; or
- (2) individuals, societies, or associations of individuals;

in making scientific investigations, compiling reports, or otherwise in the manner and to the extent that the *commission* considers necessary or advantageous in carrying out the purposes of this title.

Delegating law-enforcement or management duties to private actors is antithetical to the constitutional imperative that is democratic accountability. Democratic accountability is frustrated when private interests or actors are allowed to engage in conduct that defines what government is in the first place. Hunting licensees are merely private people who have not been elected or appointed and are in no way accountable to the public. Perversely, hunting licensees are only accountable to Defendant after-the-fact, meaning if they break the law. Furthermore, even if the NRC deemed private “cooperation” necessary and proper to manage wildlife, IDNR cannot use the emergency rule process to effectuate the rule or rules that would enable such “cooperation”. The agency must use the promulgation process.

Defendant does not have legislative authority to use the emergency rule process¹⁰ to implement or to effectuate the agency’s power to permit rifle-hunting deer on public land.¹¹ Ind.

¹⁰ IC § 4-22-2.37.1

¹¹ I.C. § 14-10-2-5 “Emergency rules”. Sec. 5. (a) The department may adopt emergency rules under IC 4-22-2-37.1 to carry out the duties of the department under the following:

- (1) IC 14-9
- (2) This article.
- (3) IC 14-11
- (4) IC 14-12-2.
- (5) IC 14-14.
- (6) IC 14-15.
- (7) IC 14-17-3.
- (8) IC 14-18, except IC 14-18-6 and IC 14-18-8.
- (9) IC 14-19-1 and IC 14-19-8.
- (10) IC 14-21.
- (11) IC 14-22-3, IC 14-22-4, and IC 14-22-5.
- (12) IC 14-23-1.
- (13) IC 14-25, except IC 14-25-8-3 and IC 14-25-13.
- (14) IC 14-26.
- (15) IC 14-27.
- (16) IC 14-28.
- (17) IC 14-29.
- (18) IC 14-35-1, IC 14-35-2, and IC 14-35-3.
- (19) IC 14-37.
- (20) IC 14-38, except IC 14-38-3.

(b) A rule adopted under subsection (a) expires not later than one (1) year after the rule is accepted for filing by the publisher of the Indiana Register.

Code § 14-10-2-5(a) establishes Defendant’s power to use the emergency rule process and specifies, in detail, the circumstances when Defendant can use the process and toward what ends. Significantly, IC §14-10-2-5(a) does not mention the statute at issue here, IC §14-22-2-8; therefore Defendant lacks statutory authority to use the emergency rule process to effectuate rifle-hunting on any “public lands”. Furthermore, the legislature cannot amend IC § 14-10-2-5(a) to accommodate use of the emergency rule process because that process circumvents public input. Such legislation would run afoul of the Due Process Clauses of both the federal and Indiana constitutions.¹² The breadth of the “public property” delegation forecloses the Defendant’s use of any process to implement the delegation that circumvents public participation because that would violate the rights to the legislative process due to the non-hunting public.

A. Plaintiff

1. Plaintiff, Center for Wildlife Ethics, Inc., (CWE) is a non-profit organization holding tax exempt status pursuant to IRC 501(C)(3) and incorporated in Indiana in 1998. CWE’s principal place of business and headquarters is currently, and has been, located at 4988 West 150 North, La Porte, IN 46350, in La Porte County, Indiana for the past twenty (20) years.
2. CWE has approximately five-hundred and fifty members, many are Indiana residents who visit and use Indiana’s state parks, historic sites, state forests and other public lands for many

¹² The Indiana constitution provides, in pertinent part, “All courts shall be open; and every person, for injury done to him in his person, property, or reputation, shall have remedy by due course of law.” (Ind. Const. Art. 1, §12). The Due Process Clause of the U.S. Constitution, which applies to the states provides, in pertinent part, “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, Sec. 1.

purposes year round and will do so during the fall and winter months of 2018 and 2019 during the times Defendant designates as various rifle-hunting seasons for deer.

3. CWE's members, not limited to Mr. Kenneth Nirenberg, are Indiana residents who participate in Defendant's rule-making and other processes that involve public participation.

4. CWE has associational standing to bring this constitutional and statutory challenge to IDNR's illegal agency action. CWE's members would otherwise have standing to bring this challenge in their own right, the interests CWE seeks to vindicate are germane to its organizational purposes and mission, and neither the claims asserted nor the relief requested herein requires any of CWE's individual members to participate in this action. CWE has an institutional interest in ensuring that Indiana's wildlife protection statutes and regulations are enforced properly.

5. On November 27, 2017, Defendant having illegally excluded CWE's member Mr. Kenneth Nirenberg from Potato Creek State Park because of a "deer reduction hunt". Upon information and belief, Defendant opened Potato Creek State Park to private hunting license holders to use rifles to hunt deer on the premises November 27th and at other times and on other state park properties.

6. CWE members, specifically Mr. Nirenberg, have been and will be directly and personally affected, aggrieved, and injured by Defendant's illegal acts that denied their access in 2017, the harm is ongoing and likely to repeat itself until 2020. All available evidence indicates Defendant will continue to illegally deny Plaintiff's access to state parks and other public properties until 2020, when the statute expires.

7. Since Defendant has never claimed it would abate or alter that practice, it is foreseeable and likely that Defendant will engage in the same conduct later this year, in 2018, and again in 2019. Therefore, Plaintiff's injury is capable of repetition without remedy.¹³

8. Defendant's acts exceed the scope of its statutory authority and thereby have harmed and will continue to harm, and cause irreparable injury to Plaintiff. In 2017 Defendant illegally excluded Mr. Nirenberg from Potato Creek State Park and illegally denied public access to Indiana's state parks, forests, reservoir properties, and other public property during the deer rifle-hunting season. Defendant's illegal acts prevented Plaintiff and will continue to prevent Plaintiff from using public lands for non-hunting purposes during the deer-hunting seasons.

9. CWE will be directly and personally affected, aggrieved, and injured if Defendant uses the emergency rule process to effectuate the legislative delegation set forth in a IC § 14-22-2-8. Defendant's use of the emergency rule process denies Plaintiff's rights to Due Process of law as guaranteed by the Ind. Const. Art. 1, § 12 and U.S. Const. amend. XIV, Sec. 1.

10. On November 8, 2017, Defendant published LSA Document #17-486, proof-positive that Defendant used the emergency rule process to exceed the scope of the statutory authorization IC § 14-22-2-8 granted to Defendant. The express language limited the use of rifles for deer-hunting to privately-owned property. Although LSA Document #17-486, which has long since expired, it demonstrates Defendant used the emergency rule process in 2017 and is likely to do so again this year, 2018.

¹³ Defendant exceeded its procedural delegation and statutory authority in 2017 by having used the emergency rule process to adopt LSA Document #17-486(E). That agency act, although now expired, authorized rifle-hunting of deer on public property even though statutory authority limited rifle deer hunting to privately-owned property.

11. All available evidence indicates that Defendant will use the emergency rule process to effectuate the legislative delegation set forth in IC § 14-22-2-8 before the hunting season begins in 2018.

12. The term “public property” is a broad legislative delegation and requires Defendant to honor Plaintiff’s and the public’s right to notice, comment, and opportunity to be heard in the administrative rulemaking process. Promulgation, the process that requires Defendant to involve Plaintiff and the public, is the process due for any rule effectuating the substantive provisions of IC § 14-22-2-8.

B. Defendant

13. Defendant Cameron Clark is and has been the Director of the Indiana Department of Natural Resources at all times relevant to this action. Mr. Clark’s office is within the Department of Natural Resources, 402 West Washington Street, Indianapolis, IN 46204.

14. Defendant and IDNR are creatures of statute, IC § 14- 9-1-1 and §§ 14-9-2-1, et seq., whose duties and responsibilities are limited by statute, see e.g. §§ IC 14-22-2-3 and 4.

Defendant’s duties include the protection, reproduction, care, management, survival and regulation of wild animal populations regardless of whether the wild animals are present on public or private property in Indiana.

15. Defendant has statutory authority to permit or allow private hunters to rifle-hunt deer on public lands acquired and/or maintained for that specific purpose. However, Defendant does not have statutory authority to permit or allow private deer-hunting licensees to “hunt” on the premises of state parks and historic sites. Defendant may “take” or destroy animals to manage those lands and may use rifles to do so, however Defendant does not have statutory authority to permit private licensees to “manage” wildlife regardless of what equipment the licensee may use.

16. The Defendant suffers no prejudice if this court issues injunctive relief. As of July 2017, IC § 14-22-11-3 authorizes Defendant IDNR and the clerk of the circuit court in each Indiana County to issue lawful hunting licenses. This court's injunction will have no effect on licensing revenue because the hunters pay only for the legal licenses authorized by the legislature. Any fee Defendant collects through a license purporting to authorize deer rifle-hunting on public land not only exceeds statutory authority and may be an unconstitutional act.

17. Declaratory relief is appropriate because Plaintiff requires a declaratory judgment as to two different rights: (1) Plaintiff's rights to participate in the rule-making process and (2) Plaintiff's right to enter and use public lands during deer- rifle deer-hunting season.

18. Without a declaratory judgment against and injunctive relief to restrain, prohibit and prevent Defendant from exceeding statutory authority, Plaintiff is stripped of its right to Due Process or participate in the public rule-making process and Plaintiff is stripped of its right to lawfully enter and use public lands.

C. Venue

19. Pursuant to Indiana Trial Rule 57(A), La Porte County is the preferred venue. CWE, an organizational plaintiff, has its principal place of business in La Porte County. Defendant, a governmental entity, is located in Indianapolis, Marion County which is predominantly urban and suburban. The public lands where rifle-hunting is most likely to occur are in La Porte County rather than in Marion County where there is no significant public land.

II. Cause of Action

Declaratory Judgment

20. Plaintiff incorporates by reference paragraphs 1 through 19 above as if fully set forth herein.

21. In 2018, the legislature made significant changes to IC § 14-22-2-8 and abolished the private property limitation, EHB 1292. Section (6) delegates broad legislative authority to Defendant to permit rifle-hunting on all Indiana’s “public property” without exception. The term “public property” is so broad on its face that, standing alone, it fails to provide an “intelligible principle”¹⁴ to guide Defendant in properly implementing the grant of legislative power.

22. Ind. Code § 14-22-2-8 fails the intelligible principle standard unless state parks and historic sites are excluded from the definition of "public property" for purposes of granting private hunting license-holders access to those lands. The “Controlled Hunt” statute, Ind. Code § 14-22-6-13 , “Controlled hunts in state parks and historic sites” allows the IDNR to manage animals on those specific properties by means that could include rifle-use or “hunting” but only if the statutory conditions have been met.

23. Defendant’s interpretations of IC § 14-22-2-8 were inconsistent with each other which means they are necessarily at odds with the design and structure of the statute.¹⁵

24. Defendant does not have statutory authority to transfer or delegate the agency’s stewardship and management duties to private hunting licensees/interests or private actors.¹⁶ Ind. Code § 14-11-1-2, “Cooperation with public or private entities or individuals”, authorizes the defendant to “cooperate” with private individuals but only to the extent the Natural Resources

¹⁴ *Dep’t of Transp. v. Ass’n of Am. Railroads*, 575 U.S. ____ (2015) (Slip. Op. No. No. 13–1080, pp. 6-10, Mar. 9, 2015) (rev’d and remanded, other procedural history omitted).

¹⁵ Pl. Reply to Def. Response to Pl. Mot. For PI and TRO, p. 5-9, n. 5 (filed Jan. 9, 2018). “Important Corrections to Indiana Hunting & Trapping Guide”, Nov. 3 2017. (Pl. Ex. 4 at the 12/27 hearing.).

¹⁶ *Dep’t of Transp. v. Ass’n of Am. Railroads*, 575 U.S. ____ (2015) (Slip. Op. No. No. 13–1080, pp. 6-10, Mar. 9, 2015) (rev’d and remanded, other procedural history omitted).

Commission (NRC) deems necessary or “advantageous” to effectuate articulated statutory goals.¹⁷

25. The NRC has not authorized Defendant to “cooperate” with private individuals or hunting licensees in any capacity whatsoever.

26. Defendant lacks statutory authority to allow or permit private hunting licensees of any kind to “manage” or otherwise take deer on state park and historic site properties.

27. Defendant lacks statutory authority to use the emergency rule process, IC § 4-22-2.37.1, to implement or to effectuate the legislative delegation established in IC § 14-22-2-8. Ind. Code § 14-10-2-5(a) establishes Defendant’s power to use the emergency rule process and specifies, in detail, the circumstances when Defendant can use the process and toward what ends. IC § 14-10-2-5(a) does not mention the statute at issue here, IC §14-22-2-8.

28. Defendant cannot use the emergency rule process to implement or to effectuate the legislative delegation established in IC § 14-22-2-8 without violating Plaintiff’s constitutional rights to Due Process granted by Indiana and the federal constitutions. The emergency rule process circumvents public input, but the “public property” delegation is legislative, broad and entitles the public and all stakeholders to notice, comment, and participate in process that determines the specifics of “public land” use for purposes of rifle-hunting deer.

¹⁷ IC § 14-11-1-2 “Cooperation with public or private entities or individuals”. Sec. 2. The department may cooperate with:

(1) a public or private institution; or
(2) individuals, societies, or associations of individuals;

in making scientific investigations, compiling reports, or otherwise in the manner and to the extent that the *commission* considers necessary or advantageous in carrying out the purposes of this title (emphasis added).

Injunction – Preliminary and Permanent

29. Plaintiff incorporate by reference paragraphs 1 through 28 above as if fully set forth herein.

30. Plaintiff will suffer permanent and irreparable harm if Defendant uses the emergency rule process to effectuate IC § 14-22-2-8.

31. Plaintiff will suffer permanent and irreparable harm if Defendant permits or allows private hunting licensees of any kind to “manage” or otherwise take deer on state park and historic site properties.

32. The Defendant suffers no prejudice if this court issues an injunction.

29. A bond is not necessary. This court’s injunction will have no effect on licensing revenue because the hunters pay only for legal licenses authorized by the legislature. Any fee Defendant collects through a license purporting to authorize deer rifle-hunting on public land not only exceeds statutory authority, it would likely violate the Separation of Powers Doctrine.

30. The public interest is served by an injunction because Defendant’s use of the emergency rule process would be an illegal agency act, a violation of the state and federal constitutions, and would affect anyone lawfully using Indiana’s public lands when hunting commences in 2018.

Relief

WHEREFORE, Plaintiff prays that this Court will grant the following relief:

A. Enter a declaratory judgment in favor of the Plaintiff wherein this court declares, decrees and adjudges that Defendant does not have statutory authority to transfer or delegate the agency’s stewardship and management duties to private hunting licensees/interests or private actors on any state park and historic site property.

B. Enter a declaratory judgment in favor of the Plaintiff wherein this court declares, decrees and adjudges that Defendant cannot use the emergency rule process or any other process that

circumvents public notice and opportunity to be heard to effectuate or implement rifle-hunting on public lands pursuant to IC § 14-22-2-8.

C. Enter a declaratory judgment in favor of the Plaintiff wherein this court declares, decrees and adjudges that Defendant would violate Plaintiff's rights to due process as guaranteed by the state and federal constitutions by using the emergency rule process or any other process that circumvents public notice and opportunity to be heard to effectuate or implement rifle-hunting on public lands pursuant to IC § 14-22-2-8.

D. Enter a preliminary injunction to be made permanent enjoining, restraining, prohibiting and preventing the Defendant from:

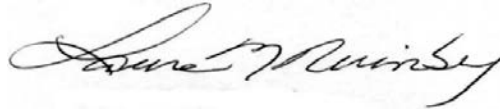
1. Transferring, delegating, assigning or otherwise granting IDNR's stewardship and management duties to private hunting licensees/interests or private actors on any state park and historic site property; and,
2. Use of the emergency rule process or any other process that circumvents public notice and opportunity to be heard to effectuate or implement rifle-hunting on public lands pursuant to IC § 14-22-2-8.

D. Grant Plaintiff's request for reasonable attorney's fees and costs as this court may deem proper pursuant to Ind. Code § 34-52-2-2 (not-for-profit entities may recover fees against state agencies), IC § 34-14-1-10 (equitable and just costs), IC § 34-52-1-1 (unmeritorious defense or other litigation), and for any other reason the court finds proper; and

E. Grant any other and further relief as the Court may deem just and proper to the cause.

Respectfully submitted,

CENTER FOR WILDLIFE ETHICS



By: _____
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CERTIFICATE OF SERVICE

I hereby certify that on April 19, 2018, a copy of this was filed via IEFS to:

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