

Law Office of Valerie Brown, LLC

P.O. Box 91659 · Anchorage, AK 99509 · Voice and Fax: (907) 272-4544 · Email: valerie.brown@alaska.com

VIA FAX AND FIRST CLASS DELIVERY

January 25, 2006

Commissioner McKie Campbell
Alaska Department of Fish and Game
P.O. Box 25526
Juneau, Alaska 99802-5526
Phone:(907) 465-4100
FAX: (907) 465-2332

Re: Emergency Regulations for Wolf Control

Dear Commissioner Campbell;

I am writing on behalf of Defenders of Wildlife to inform you of illegal actions by the Alaska Board of Game today.

As you are aware, on January 17, 2006, the Alaska Superior Court issued a decision and order invalidating the State of Alaska's Wolf Control Implementation Plans, codified at 5 ACC 92.125. *Friends of Animals, Inc. v. State*, Case #3AN-03-13489. Today, without the statutorily required thirty-days notice and an opportunity for public comment, the Board of Game adopted *emergency* regulations for five Wolf Control Plans. The Board's action is illegal for at least two reasons.

First, the Board of Game's regulations require that the Board issue a public notice and give the public an opportunity to comment before it adopts a Wolf Implementation Plan. *See* 5 AAC 92.110(d)(5). Since the Board did not give the public an opportunity to review and comment on the Plans, the Board's action adopting them violated its own regulation and therefore is illegal.

Second, the Alaska Administrative Procedure Act requires that before new regulations are promulgated, the public must be given thirty-days notice and an opportunity to comment. *See* AS 44.62.190(a), 44.62.210(a). The Legislature intended

emergency regulations to be used only where there is an actual emergency, i.e., when it is "necessary for the immediate preservation of public peace, health, safety or general welfare." AS 44.62.250. It is the state's policy that emergencies are held to a minimum, and are rarely found to exist. AS 44.62.270. The Department of Law's guidelines for drafting regulations also make it clear that emergency regulations should only be used when "absolutely necessary" and where there is "truly" a risk to public peace, health, safety or general welfare. Drafting Manual for Administrative Regulations, 16th Edition, September 2005, p. 25.

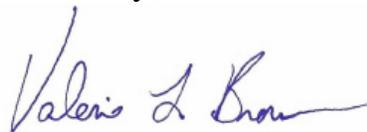
The regulations adopted today, and the findings they are based on, do not address any emergency. The Board's action was not "necessary for the immediate preservation of public peace, health, safety or general welfare." AS 44.62.250. Simply put, a judicial order invalidating the Board's previous regulations authorizing wolf control plans is not an "emergency" that justifies circumventing the public process mandated by the Alaska Administrative Procedure Act.

Allowing the public ample opportunity to review proposed government actions and to comment on public policy issues is the cornerstone of an open democracy. Notifying and involving the public is even more important when the proposed government action is unpopular and very controversial, as has long been the case with wolf control.

Therefore, Defenders of Wildlife requests that you refrain from granting any new aerial gunning or land-and-shoot permits (or renewing/reinstating any permits granted under the invalidated regulations) until the regulations are legally adopted under AS 44.62. The Board of Game is given the "prerogative to establish" the parameters of the program, including who is authorized to participate. AS 16.05.783(d). However, after the Board has done that, AS 16.05.783 does not require that the Commissioner act to implement the Board's decisions regardless of their legality. When the Board has acted in violation of its own regulations and the APA, the Commissioner should not implement the Board's illegal decisions.

Thank you for your prompt attention to this serious violation of the public process.

Sincerely,

A handwritten signature in blue ink that reads "Valerie L. Brown". The signature is fluid and cursive, with a long horizontal stroke at the end.

Valerie Brown