

DEPARTMENT OF NATURAL RESOURCES

February 7, 2020

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Ms. Lori Nordstrom
Assistant Regional Director
U.S. Fish and Wildlife
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Ms. Alisa Shull
Chief of Endangered Species
U.S. Fish and Wildlife
5600 American Boulevard West – Suite 990
Bloomington, Minnesota 55437-1458
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Dear Assistant Director Nordstrom and Chief Shull:

Re: Minnesota Department of Natural Resources Incidental Take Permit Application for
Canada Lynx, No. MB682323-0

On April 21, 2008, the Minnesota Department of Natural Resources (DNR) submitted an incidental take permit application and supporting documentation to the U.S. Fish and Wildlife Service (USFWS) requesting an incidental take permit for the incidental take of Canada Lynx (*Lynx Canadensis*) associated with trapping in Minnesota. The application was reviewed and found to be adequate by the Minnesota Federal District Court and made in compliance with a court order issued by that Court in *Animal Protection Institute and Center for Biological Diversity v. Holsten*, slip op at 3 and 4 (Minn. D.C. April 14, 2008). Since 2008, DNR staff have reached out to USFWS staff on multiple occasions to inquire about the status of Minnesota's application. To date, the USFWS has not acted upon the DNR's application for an incidental take permit. I have enclosed a copy of the permit application and its attachments for your information.

On December 4, 2019, the DNR received a notice of intent to sue (Notice) from the Center For Biological Diversity (Biological Diversity) stating its intent to sue the DNR for the incidental taking of Canada Lynx without an incidental take permit in violation of the Endangered Species Act, 16 U.S.C. §§ 1531-1544. In its Notice (enclosed), Biological Diversity states that it was advised by Ms. Tamara Smith of the USFWS that Minnesota's incidental take permit application is currently inactive.

I want to acknowledge that we do not know whether Biological Diversity's Notice accurately characterizes whatever information Ms. Smith may have conveyed. However, we are compelled to address with you what the Notice attributes to Ms. Smith and the consequences of the USFWS's inaction on our permit application.

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Specifically, the DNR has never been informed of any decision by the USFWS to place the DNR's permit application on inactive status. We would have objected to such a decision had we been made aware of it. According to the Notice, Ms. Smith further advised Biological Diversity that the DNR declined to undertake environmental review required under the National Environmental Policy Act (NEPA) and that the USFWS thus could not act on the DNR's application. As you are aware, it is the USFWS's obligation to prepare environmental review under NEPA, and not the DNR's. Furthermore, our records indicate that your agency invited the DNR to apply for a grant to fund the USFWS efforts in preparing environmental review and asked the DNR contribute a necessary grant match.

To attribute a delay in the USFWS's permit decision-making to the DNR declining to prepare the environment review under NEPA would be a mischaracterization of the DNR's legal obligations and the actual facts of the situation. The issuance of an incidental take permit is a federal action under NEPA, and the obligation to undertake the necessary environmental review rests with the USFWS, not the DNR.

In its Notice, Biological Diversity directly links its threatened litigation against the DNR to the USFWS's inaction on the DNR's application for an incidental take permit. In light of this, the DNR requests, in the strongest terms possible, that the USFWS take action and issue the DNR the incidental take permit it requested in 2008.

Sincerely,



David P. Olfelt, Director
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Enclosures

c Ms. Sherry Enzler, General Counsel, Minnesota Department of Natural Resources