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For Immediate Release

### Dangerous Wild Animal Board Violates Due Process

The review of West Virginia's Dangerous Wild Animal Rule has violated due process and citizens should be upset!

More than 3 weeks ago, West Virginia's Legislative Rule-Making Review Committee (LRMRC) began receiving affidavits documenting that hundreds of pages of public comments are missing from the official record for Proposed Rule 61-30 (Dangerous Wild Animal Rule) at

<http://apps.sos.wv.gov/adlaw/csr/readfile.aspx?DocId=26112&Format=PDF>.

Of great concern is the fact that over 300 pages of crucial information that were submitted for review are missing from the official record. For example, 139 pages are missing from the 11 comments sent to the WV Department of Agriculture by WV USARK (a reptile and amphibian conservation group). In addition, USARK (a reptile and amphibian advocacy association) discovered that 132 pages are missing from its comment. The official record is also absent of comments submitted by numerous concerned and affected West Virginians. A quick inspection of the official record clearly indicates that numerous files attached to emails are missing and were therefore not reviewed. The above referenced comments contain substantial objections to Proposed Rule 61-30. See all missing comments and supporting documentation at <http://usark.org/wp-content/uploads/2014/10/WV-Missing-Comments.pdf>.

The LRMRC is required by law to determine whether a proposed legislative rule has been proposed for promulgation in compliance with the requirements of the Administrative Procedures Act. [See W. Va. Code § 29A-3-11(b)(7).] While fulfilling its obligation to review all legislative rules, the LRMRC has broad powers, including conducting investigations. [See W. Va. Code § 29A-3-10.] In State ex rel. White v. Parsons, [199 W. Va. 1, 10; 483 S.E.2d 1, 10 (1996)], the Supreme Court of Appeals of West Virginia held that in a rule-making procedure, when an agency has before it substantial objections to the proposal made by interested persons, as a result of a comment period precedent to the approval of a regulation, the agency must conduct a good faith review of the objections and reflect the substance of that review on the rule-making record.

With respect to Proposed Rule 61-30, the Dangerous Wild Animal (DWA) Board provided no information when filing the rule on August 1, 2014 that reflects the substance of any review of any comments made during the 30-day comment period. Thus, the DWA Board violated the requirement in State ex rel. White v. Parsons of reflecting the substance of its review of substantial objections to Proposed Rule 61-30. Moreover, the fact that hundreds of pages of comments are missing is evidence that the DWA Board never reviewed those specific comments, at all. Therefore, the DWA Board appears to have also violated the requirement to meaningfully review substantial comments/objections.

In State ex rel. White v. Parsons, the Supreme Court of Appeals of West Virginia barred enforcement of the rule in that case and stated that the agency could propose and adopt appropriate replacement regulations. Accordingly, the LRMRC should inform the DWA Board that it needs to withdraw Proposed Rule 61-30, comply with all requirements of the Administrative Procedures Act, and then resubmit its

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proposed rule with any appropriate amendments to reflect its meaningful review of all submitted comments. In addition, the LRMRC should also immediately institute an investigation to determine why so many pages of public comments are missing from the official record submitted to the LRMRC. Until an independent investigation has been thoroughly conducted, the citizens of West Virginia and the LRMRC itself have no way of knowing whether the missing comments were intentionally deleted, negligently omitted, or missing for some other reason.

What is clear is that the DWA Board has violated the law (Administrative Procedures Act) and the LRMRC has not responded to numerous affidavits providing evidence of the complete breakdown of the legislative rule-making process.

**CONTACT:** Media and press can contact USARK for additional information at [Info@USARK.org](mailto:Info@USARK.org).

Sincerely,

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