

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of Hibbing Taconite
Mine and Stockpile Progression and
Williams Creek Project Specific
Wetland Mitigation

**ORDER DENYING MOTION TO
DISMISS OAH APPEAL FOR LACK OF
JURISDICTION OR, ALTERNATIVELY,
MOTION FOR ADMINISTRATIVE
REVIEW ON THE RECORD**

The above-entitled matter is before Administrative Law Judge Barbara L. Neilson on the Motion to Dismiss for Lack of Jurisdiction or, in the alternative, Motion for Administrative Review on the Record filed by Northern Conservation, LLC and Cliffs Mining Company's (Petitioners)¹ on October 17, 2014.

The Department of Natural Resources (Department or DNR) filed its Response to Petitioners' Motion on October 31, 2014. Lake of the Woods County; Lake of the Woods County Soil and Water Conservation District; Mike Hirst, in his capacity as a member of the Lake of the Woods Soil and Water Conservation District Technical Evaluation Panel; and Josh Stromlund, in his capacity as Land & Water Planning Director for Lake of the Woods County (collectively, County) filed a Response and Objection to Petitioners' Motion to Dismiss or Motion for Administrative Review on the Record on October 30, 2014. The Petitioners filed a Reply to the DNR's and County's responses in opposition to their Motions on November 5, 2014.

The Administrative Law Judge heard oral argument on the motions by telephone on Friday, November 14, 2014, and the OAH record with respect to the motions closed on that date.

Susan K. Wiens and William P. Hefner, Environmental Law Group, represented the Petitioners. Fiona B. Ruthven, Assistant Attorney General, represented the DNR. John C. Kolb, Rinke Noonan, represented the County.

¹ Cliffs Mining Company is the managing agent of Hibbing Taconite Company, an unincorporated joint venture. Both Cliffs Mining Company and Northern Conservation, LLC are owned by subsidiaries of Cliffs Natural Resources, Inc. See Petitioners' Notice of Motion and Motion to Dismiss OAH Appeal for Lack of Jurisdiction or Alternatively, Motion for Administrative Review on the Record at 1 (Oct. 17, 2014).

Based upon the record in this matter, and for the reasons set out in the following Memorandum,

IT IS HEREBY ORDERED as follows:

- (1) The Petitioners' Motion to Dismiss OAH Appeal for Lack of Jurisdiction is **DENIED**.
- (2) The Petitioners' alternative Motion for Administrative Review on the Record is **DENIED**.
- (3) A Prehearing Conference shall be held by telephone in this matter on **Tuesday, January 13, 2015, at 2:30 p.m.** To participate in the conference call, parties must call **1-888-742-5095** at that time and, when prompted, enter conference code **371-152-3559#**.
- (4) This matter shall proceed to hearing on a date to be determined during the Prehearing Conference.

Dated: December 15, 2014.

s/Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

MEMORANDUM

Background

This contested case proceeding involves wetland-mitigation plans submitted by Petitioners for a project located on Petitioners' property in Lake of the Woods County known as the Williams Creek site.² The wetland-mitigation project is part of a mining reclamation plan approved in connection with a permit to mine issued by the Department. Mineland reclamation activities in the State, including wetland mitigation related to mining projects under DNR permits to mine, are governed by the Minnesota Mineland Reclamation Act of 1969 (Mineland Reclamation Act).³

Under Minnesota law, a wetland "must not be drained or filled, wholly or partially," unless the wetland is "replaced by restoring or creating wetlands of at least equal public value . . ."⁴ If a project that requires a permit to mine will create an impact

² Notice and Order for Hearing, ¶¶ 23-32.

³ Minn. Stat. §§ 93.44-.51(2014).

⁴ Minn. Stat. § 103G.222, subd. 1(a) (2014).

on wetlands, the statute and applicable rules specify that the Commissioner of Natural Resources must approve the mining operator's wetland replacement plan.⁵

The plan submitted to the DNR by Petitioners on January 21, 2014 (2014 Plan) included a proposal to use approximately 13 acres of the Williams Creek Site as replacement wetlands for wetland impacts at Petitioners' Hibbing Taconite Mine and Stockpile Progression.

On April 28, 2014, Jess Richards, Director of the DNR's Division of Lands and Minerals, as designee of the Commissioner, issued a notice of decision approving the Williams Creek project-specific wetland mitigation project, which includes wetland mitigation credits intended to offset wetland impacts for the expansion of Petitioners' Hibbing Taconite Mine and Stockpile Progression.⁶

The DNR's April 28, 2014, Notice of Decision included the following appeal information:

APPEAL OF THIS DECISION

Pursuant to Minn. Stat., sec. 93.50, any person aggrieved by this decision may appeal the decision in the manner provided for a contested case hearing under Minn. Stat., Secs., 14.57 to 14.62 and the procedures prescribed in Minn. Rules part 1400.5100 to 1400.8500. An appeal of this decision by an aggrieved party must be received by the commissioner within 30 calendar days of the date of the mailing of this Notice. The appeal shall be sent to:

Jess Richards, Director
Division of Lands and Minerals
Department of Natural Resources
500 Lafayette Road
St. Paul, MN 55155⁷

The County objected to the Department's determination that the plan was adequate and on May 28, 2014, sent a notice of appeal to Jess Richards via e-mail, facsimile transmission, and certified mail requesting a contested case hearing.⁸ The Department subsequently initiated the present proceeding before the Office of Administrative Hearings (OAH).⁹

On August 20, 2014, the Administrative Law Judge granted Petitioners authority to intervene in this proceeding.

⁵ *Id.*; Minn. R. 8420.0930, subp 1 (2013).

⁶ Affidavit of Fiona Ruthven, Exhibit 1.

⁷ *Id.* at 5.

⁸ Aff. of F. Ruthven, Ex. 2.

⁹ Notice and Order for Hearing at ¶ 34.

On October 17, 2014, Petitioners served and filed the instant motions to dismiss this contested case, or in the alternative, limit the proceedings to a review of the administrative record.

Motion Standard

An Administrative Law Judge may recommend dismissal of a case “where the case or any part thereof has become moot or for other reasons.”¹⁰ In considering motions to dismiss in contested case matters, the OAH has generally followed the standards developed in judicial courts.¹¹ A motion to dismiss is brought solely on the pleadings and may be granted only where the moving party shows there is no right to relief as a matter of law.¹²

Governing Statutes and Rules

Minnesota Statutes, section 93.50 of the Mineland Reclamation Act is entitled “APPEAL” and provides that “[a]ny person aggrieved by any order, ruling, or decision of the commissioner may appeal such order, ruling, or decision in the manner provided in chapter 14.” Chapter 14 of the Minnesota Statutes contains the Minnesota Administrative Procedure Act.¹³

The Department’s rules governing appeals of metallic mining permit matters provides that “[p]rocedures pursuant to parts 1400.5100 to 1400.8500 shall apply to any contested case hearing under these parts, except as otherwise provided in Minnesota Statutes, sections 93.44 to 93.51 and these parts.”¹⁴ Minnesota Rules 1400.5100 to 1400.8400 contain the OAH rules that govern all contested case proceedings conducted under Chapter 14.¹⁵ These rules address such matters as the assignment and duties of the Administrative Law Judge, service and filing procedure, prehearing conferences, motions, discovery, subpoenas, rules of evidence, continuances, and the conduct of the contested case hearing.

As noted above, the Notice of Appeal contained in the Department’s decision approving Petitioners’ 2014 Plan directed persons aggrieved by the decision to appeal in the manner provided for a contested case hearing under Minn. Stat. §§ 14.57-.62. The cited provisions address the initiation of contested case proceedings, notice and hearing requirements, informal disposition, evidence in contested case hearings, and decisions and orders issued in contested case proceedings. The Department’s Notice of Appeal did not include any reference to Minn. Stat. §§ 14.63-.69, which focus upon the right to obtain judicial review of final contested case decisions before the Minnesota Court of Appeals.

¹⁰ Minn. R. 1400.5500(K) (2013).

¹¹ Minn. R. 1400.6600 (2013) (“In ruling on motions where parts 1400.5100 to 1400.8400 are silent, the judge shall apply the Rules of Civil Procedure for the District Court of Minnesota to the extent that it is determined appropriate in order to promote a fair and expeditious proceeding.”).

¹² Minn. R. Civ. P. 12.02 (2014).

¹³ Minn. Stat. §§ 14.001-.69 (2014).

¹⁴ Minn. R. 6130.5600 (2013).

¹⁵ See Minn. R. 1400.5010 (2013).

Petitioners' Motion to Dismiss

The Petitioners argue that the OAH lacks jurisdiction to hear this appeal because the Department's decision approving the Williams Creek wetland mitigation project was a final agency decision appealable only to the Minnesota Court of Appeals. The Petitioners contend that the Minnesota Court of Appeals has exclusive jurisdiction to hear appeals of final agency decisions and the Department had no legal authority to initiate a contested case proceeding before the OAH.

The Petitioners rely on *Sackett v. Environmental Protection Agency*¹⁶ in support of their position that the Department's approval of its 2014 Plan was a final agency decision. In *Sackett*, the U.S. Supreme Court held that an agency decision is "final" where (1) the agency determined rights or obligations; (2) legal consequences flow from the agency action, and (3) the agency action marks the "consummation" of the agency's decision making process.¹⁷ The Petitioners assert that, like the agency decision in *Sackett*, the DNR's approval of the wetland mitigation plan was a final decision. The Petitioners contend that the Department's decision determined their rights and obligations when it approved the proposed wetland mitigation construction. They further argue that legal consequences followed from the DNR's decision since the Petitioners cannot complete their mine expansion plans and will be prohibited from impacting certain wetland property at the mine site without approval of the wetland mitigation plan. The Petitioners also insist that the DNR's decision was the consummation of the agency's decision-making process because it "completely resolved" all of the Petitioners' wetland mitigation application requests.¹⁸ As a result, the Petitioners maintain the DNR's decision was a final agency decision appealable only to the Court of Appeals under Chapter 14.

The Petitioners also argue that the Department's conclusion that Minn. Stat. § 93.50's general reference to Chapter 14 implies that appeals of its wetland mitigation decisions must be by a contested case hearing is erroneous and lacks support in the law. Instead, the Petitioners argue that specific language requiring a contested case hearing must exist before an agency can order a contested case hearing. For example, the Petitioners note that Minn. Stat. § 103G.311, subd. 1 (2014), specifies that "a hearing [regarding water use permits] must be conducted as a contested case hearing under chapter 14."

¹⁶ 566 U.S. ___, 132 S.Ct. 1367 (2012).

¹⁷ *Id.* at 1372, citing *Bennett v. Spear*, 520 U.S. 154, 178, 117 S.Ct. 1154 (1997).

¹⁸ Petitioners' Reply Memo at 4 (November 5, 2014).

According to the Petitioners, without similar explicit statutory support for initiating a contested case proceeding to appeal the DNR's decision, the Department is without authority to order a contested case hearing and the OAH is without jurisdiction to hear and adjudicate the matter. Moreover, the Petitioners assert that the use of the term "APPEAL" in the heading of section 93.50 further supports finding that the legislature intended the judicial appeal provisions of §§14.63 to 14.69 to apply to the Department's decision and not the provisions governing contested case hearings.

The Petitioners also contend that permitting a contested case hearing in this matter will produce inequitable results. The Petitioners note that, pursuant to Minn. Stat. 103G.2242 , subd. 9(d) (2014), final decisions by the Board of Water and Soil Resources (BWSR) are deemed "the decision of an agency in a contested case for purposes of judicial review under sections 14.63 to 14.69." Minn. Stat. § 14.63 requires persons aggrieved by a final agency decision to file a writ of certiorari challenging the decision with the Court of Appeals within 30 days of the decision. The Petitioners argue that, like BWSR decisions, the DNR's decision in this matter was a final agency decision appealable only to the Minnesota Court of Appeals. Otherwise, a party seeking approval for a wetland replacement plan from BWSR who is dissatisfied with its final decision may appeal that decision to the Court of Appeals, but a party seeking approval for a wetland mitigation plan from the DNR who is likewise dissatisfied with the DNR's final decision would be required to proceed with a contested case hearing and only after that was completed could it file an appeal with the Court of Appeals. The Petitioners argue that there is no rational basis for this "inequitable extra step" to the Court of Appeals.

Finally, should the Administrative Law Judge decide that the OAH has jurisdiction to consider this matter, the Petitioners argue that the scope of review should be limited to a review of the administrative record without further fact finding or additional information. The Petitioners contend this scope of review is appropriate given the procedural posture of the case as an appeal of a final agency decision. Moreover, the Petitioners maintain that evidence outside the record is not material to whether the DNR's decision approving the wetland replacement plan was made in accordance with applicable law.

The Petitioners assert that the Administrative Law Judge should apply the appellate standard of review found at Minn. Stat. §§ 14.68 and 14.69 when considering this manner. Section 14.68 specifies that the review "shall be confined to the record" unless transferred to district court due to "irregularities in procedure." Section 14.69

provides that the reviewing court may affirm the decision of the agency; remand the case for further proceedings; or reverse or modify the decision under certain enumerated circumstances. Specifically, reversal or modification is permitted if:

[T]he substantial rights of the petitioners may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are:

- (a) in violation of constitutional provisions; or
- (b) in excess of the statutory authority or jurisdiction of the agency; or
- (c) made upon unlawful procedure; or
- (d) affected by other error of law; or
- (e) unsupported by substantial evidence in view of the entire record as submitted; or
- (f) arbitrary or capricious.

Responses by the Department and County

The Department and County oppose the Petitioners' Motion to Dismiss. They argue that the DNR's approval of Petitioners' wetland-mitigation plan is a decision of the Commissioner that is properly subject to contested case review under Minn. Stat. § 93.50 and is not immediately appealable to the Court of Appeals at this juncture.

Both the Department and County point out that section 93.50's general reference to appeals "in the manner provided in chapter 14" is not limited to the right to seek judicial review under Minn. Stat. §§ 14.63-.69. According to the Department and County, had the Legislature intended appeal rights to be so circumscribed it would have expressly referenced the judicial review provisions of chapter 14 as it has in other contexts. They note several examples within Minnesota water law where the appeal procedure specifically references the judicial review standards of Chapter 14, and not the entire chapter. For example, decisions issued by the BWSR are appealed to the Court of Appeals because the BWSR makes its decision on appeal of the Local Government Unit's (LGU) decision.¹⁹ In addition, the statutes governing appeals of administrative penalties assessed against those who violate the appropriation and use of water provisions make specific reference to the judicial review provisions set forth in Minn. Stat. §§ 14.63 to .69.²⁰

¹⁹ Minn. Stat. § 103G.2242, subd. 9a (2014).

²⁰ Minn. Stat. § 103G.299, subd. 6(e) (2014). Other statutes also expressly reference the judicial review provisions of chapter 14, such as: Minn. Stat. §§ 47.325 (2014) ("A savings bank aggrieved by any action or inaction of the commissioner under sections 47.27 to 47.30 may appeal under sections 14.63 to 14.69"); 48A.15, subd. 1 (2014) ("An order of the commissioner to disallow the establishment of a trust

The Department and County maintain that the fact that the Legislature did not similarly limit the right of review to the specific judicial review provisions of Minn. Stat. §§ 14.63 to 14.69 when it drafted section 93.50 compels the conclusion that section 93.50 requires initiation of a contested case hearing when a party is aggrieved by a determination of the Commissioner under the Mineland Reclamation Act.

The Department further notes that, when the Mineland Reclamation Act was first adopted in 1969, section 93.50 provided that any person aggrieved by any order, ruling, or decision of the Commissioner “may appeal such order, ruling, or decision in the manner provided in chapter 15,” which was the predecessor to the Minnesota Administrative Procedure Act now set forth in chapter 14. This predecessor statute did not provide any right of judicial review except from contested cases.²¹ Absent a contested case, there was no right to judicial review under chapter 15.²²

Therefore, based on the DNR’s longstanding interpretation of section 93.50, and the history of chapter 14 and its predecessor chapter 15, the Department asserts that section 93.50 should be read to include a right to a contested case hearing under Minn. Stat. §§ 14.57 to 14.62, which, after hearing and a final decision, would be subject to judicial review under Minn. Stat. §§ 14.63 to 14.69. The Department maintains that the plain language of section 93.50 and its administrative history evidences the intent to provide aggrieved persons a right to a contested case hearing.

Moreover, the Department contends that even if a hearing is not required by law, it is not an error for it to grant one. The Department maintains that an agency may initiate a “gratuitous hearing” even when there is no statutory or constitutional right to a hearing.²³ The Department notes that it recently granted a hearing in a matter involving a wildlife biologist’s permit to monitor bears, even though one was not required by law.²⁴ In addition, it points out that even a case cited by the Petitioners recognizes that an agency may grant a gratuitous hearing. In *In re Northern States Power Co.*,²⁵ the Court of Appeals held that the Public Utilities Commission “could have granted relator a contested case hearing, but it was not error to not do so.”²⁶ The Department argues

service office under this section is subject to judicial review under sections 14.63 to 14.69.”); 50.085, subd. 19(e) (2014) (“A savings bank aggrieved by an action of the commissioner under this subdivision may appeal the action and the proceedings shall be conducted pursuant to sections 14.63 to 14.69.”); and 114C.14, subd. 2 (2014) (“Any person aggrieved by a final decision of the Pollution Control Agency to issue, amend, or revoke a Minnesota XL permit may obtain judicial review pursuant to sections 14.63 to 14.69.”).

²¹ See Minn. Stat. § 15.0424 (1969) (“Any person aggrieved by a final decision in a contested case of any agency . . . is entitled to judicial review thereof . . .”),

²² See *Setty v. Minn. State. College Bd.*, 235 N.W.2d 594, 597 (Minn. 1975).

²³ See Beck, Gossman & Nehl-Trueman, *Minnesota Administrative Procedure*, § 4.2 at 47 (2d. ed. 1998 & Supp. 2008); see also *In the Matter of Rances Barthelemy*, OAH Docket No. 80-1008-31374, AMENDED ORDER ON CROSS MOTIONS FOR SUMMARY DISPOSITION (2014) (“When an agency is not required by law or constitutional principles to initiate a contested case, it is permitted to offer a ‘gratuitous hearing’”).

²⁴ See *In re Minnesota Department of Natural Resources Special Permit No. 167868 issued to Lynn Rogers*, OAH Docket No. 84-2001-30915, NOTICE AND ORDER FOR PREHEARING CONFERENCE AND ORDER FOR HEARING (September 4, 2013).

²⁵ 676 N.W.2d 326 (Minn. Ct. App. 2004).

²⁶ *Id.* at 336.

that its exclusive authority over mineland reclamation activities, including wetland mitigation projects for mining-related wetland impacts, gives it the authority to order the instant hearing even if one is not specifically required by statute.

The Department and County also dispute the Petitioners' contention that allowing a contested case hearing under section 93.50 creates an unjust dual process for appealing wetland mitigation decisions under the Wetland Conservation Act (WCA). The County asserts that, contrary to the Petitioners' claim, *all* approvals of wetland mitigation plans require a two-step administrative process before judicial review. For most wetland mitigation plans, other than those required for permits to mine, approval decisions are made first by a local government unit (LGU).²⁷ The LGU is typically a county, city, town, or water management organization depending on where the proposed activity is located.²⁸ The LGU's decision is appealable to the BWSR.²⁹ The BWSR's decision is appealable to the Court of Appeals pursuant to the judicial review provisions at Minn. Stat. §§ 14.63 to 14.69.³⁰ Thus, WCA decisions involve a two-step process of administrative review before judicial review: (1) the LGU decision; and (2) the BWSR review.

For wetland mitigation plans required by permits to mine, the legislature designated the DNR as the "LGU" with the authority to approve plans. The DNR maintains that the DNR's decision is appealable to the OAH by way of a contested case hearing;³¹ the OAH issues a recommendation to the DNR Commissioner; and the final decision of the Commissioner may thereafter be appealed to the Court of Appeals pursuant to the judicial review provisions of Minn. Stat. §§ 14.63 to 14.69.

The County argues that the Petitioner is, in essence, advocating for a one-step process where the DNR's initial approval is the final decision and aggrieved parties are deprived an administrative review process to formally address their concerns with the agency prior to appealing to the Court of Appeals.

Finally, both the Department and County object to the Petitioners' alternative motion to limit any proceeding before the Administrative Law Judge to a review of the Department's administrative record. They argue that Minn. Stat. § 93.50 provides a right to appeal the Department's approval determination to a contested case hearing, and nothing in that statute or the governing rules limits the scope of review of such a proceeding.

Discussion

After careful consideration of the arguments of the parties, the Administrative Law Judge concludes that the OAH has jurisdiction under Minn. Stat. § 93.50 to hear appeals of decisions of the Department on projects requiring permits to mine and

²⁷ See Minn. Stat. § 103G.2242, subd. 1(b) (2014).

²⁸ Minn. R. 8420.0200, subp. 1(A) and (B) (2013).

²⁹ Minn. R. 8420.0905, subp. 3 (2013).

³⁰ *Id.*, subp. 5.

³¹ Minn. Stat. § 93.50; Minn. R. 6130.5600.

wetland mitigation plans. The plain language of section 93.50 provides aggrieved parties the right to appeal a decision through the contested case hearing procedures provided in Chapter 14. The reference to the entirety of Chapter 14 in section 93.50 supports finding that the Legislature intended aggrieved parties to be afforded a contested case hearing. Had the Legislature wished to limit appeals to the Court of Appeals, it would have cited explicitly to the judicial appellate review provisions set forth in Minn. Stat. §§ 14.63-.69. Moreover, the fact that section 93.50 is entitled “APPEAL” does not, as the Petitioners contend, evince a clear legislative intent that the Department’s decision be reviewed only by appeal to the Court of Appeals. Headnotes of statutory sections and subdivisions in Minnesota Statutes are “mere catchwords to indicate the contents of the section or subdivision and are not part of the statute.”³²

The Administrative Law Judge also finds Petitioners’ reliance on *Sackett v. Environmental Protection Agency*³³ in support of their position that the DNR’s decision was a “final” agency decision, to be misplaced. In *Sackett*, the plaintiffs asked the Environmental Protection Agency (EPA) for a hearing regarding a compliance order which stated that their construction project violated the Clean Water Act.³⁴ After the EPA denied that request, the plaintiffs sought declaratory and injunctive relief under the federal Administrative Procedure Act, but their claims were dismissed by the United States District Court for the District of Idaho for lack of subject-matter jurisdiction.³⁵ On appeal, the Ninth Circuit Court of Appeals affirmed, concluding that the Clean Water Act precludes pre-enforcement judicial review of compliance orders and that such preclusion did not violate due process.³⁶ The United States Supreme Court granted certiorari and found that the EPA’s compliance order was a final agency decision for which there was no adequate remedy other than judicial review pursuant to the APA.³⁷ The Court found that the order issued by the EPA determined the Sacketts’ legal obligation to restore their property according to an EPA-approved plan; legal consequences flowed from the issuance of the EPA order; and the EPA order was not subject to further agency review. The Court also noted that the Clean Water Act does not preclude judicial review. Accordingly, the Court held that the “Findings and Conclusions” in the EPA compliance order marked the “consummation” of the agency’s decisionmaking process, and allowed the plaintiffs to seek judicial review.³⁸

The facts in the present case are distinguishable from those involved in *Sackett*. Here, the DNR’s April 28, 2014, approval of the Petitioners’ wetland mitigation plan *is* subject to further agency deliberation and, consequently, it *is not* a final agency decision. Section 93.50 permits aggrieved persons to appeal Department decisions pursuant to chapter 14, and the Department’s decision approving the plan included a notice of appeal that expressly provided for a contested case hearing under Minn. Stat. §§ 14.57 to 14.62. Those provisions of the Minnesota Administrative Procedure Act

³² Minn. Stat. § 645.49 (2014).

³³ 566 US ___, 132 S.Ct. 1367 (2012).

³⁴ *Id.* at 1371.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 1374.

³⁸ *Id.*

specify that the Administrative Law Judge will conduct an evidentiary hearing and issue a report containing Findings of Fact, Conclusions of Law, and a Recommendation to the Commissioner of the DNR.³⁹ The Commissioner will then review the entire record and make the final administrative decision. At that point, any party aggrieved by the final decision of the Commissioner is entitled to seek judicial review pursuant to Minn. Stat. §§ 14.63 to 14.69.

The Administrative Law Judge concludes that the April 28, 2014, decision by the Department approving the 2014 Plan was not a final agency decision and that, under Minn. Stat. § 93.50, Minn. R. 6130.5600, and the appeal provision included in the DNR's Notice of Decision, the Respondents are entitled to a contested case hearing. The contested case hearing is to be conducted pursuant to Minn. Stat. ch. 14 and Minn. R. 1400.5010-1400.8500. Contested case hearings are evidentiary hearings.⁴⁰ The Petitioners' request that the hearing be limited to a review of the administrative record that has already been compiled by the DNR and that the Administrative Law Judge apply the appellate standard of review in section 14.69 to the DNR's decision must, therefore, be denied.

The Petitioners' Motion to Dismiss the OAH Appeal for Lack of Jurisdiction and their Alternative Motion for Administrative Review on the Record are denied. Accordingly, this matter will proceed to a contested case hearing on a date to be determined at the Prehearing Conference scheduled to be held on January 13, 2015, at 2:30 p.m.

B. L. N.

³⁹ See Minn. Stat. § 14.50.

⁴⁰ See, e.g., Minn. Stat. § 14.58 (specifying that, "[i]n any contested case all parties shall be afforded an opportunity for hearing after reasonable notice" and the OAH "shall maintain the official record which shall include subsequent filings, testimony and exhibits"); Minn. Stat. § 14.60, subd. 2 (stating that, "[a]ll evidence . . . which is offered into evidence by a party to a contested case proceeding, shall be made a part of the hearing record of the case"); Minn. Stat. § 14.60, subd. 3 (guaranteeing the "right of cross-examination of witnesses who testify" and "the right to submit rebuttal evidence"); and Minn. R. 1400.7300 (2013) (allowing the admission of "all evidence which possesses probative value, including hearsay, if it is in the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs").