

# The Proposed Piceance Basin Predator Management Plan Violates the Law and is Bad “Science” and Public Policy

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# CPW Failed to Address Public Questions and Concerns

WildEarth Guardians submitted over 20 questions to CPW about the proposed Plans over 75 days ago. CPW failed to answer. Examples:

- How will CPW prevent trapping of non-target animals, including companion animals (i.e., dogs)?
- Has CPW considered the risk of capturing state and federally protected species?
- How will trapped non-target animals be treated?
- How will CPW prevent trapping of female bears and cougars with dependent young?
- How often will traps be checked?

# Plan Could Undermine Ecosystem Integrity

Additional unanswered questions:

- In the event that cougars or bears are trapped with young in the vicinity, how will CPW handle the dependent young?
- Does CPW have current scientifically-based population estimates for cougars and bears in both the study and control regions?
- Has CPW taken into account the low reproductive rate of black bears and the possibility for significant negative impact on the black bear population?
- When is the last time CPW adjusted its target for the mule deer population?
- Does that number reflect current habitat conditions, including habitat destruction and fragmentation from oil and gas extraction and urban development?

# The Plan Lacks Scientific Integrity

Treves *et al.* 2016 and the open letter from a dozen leading scientists and scholars have already outlined the lack of scientific rigor of the proposed “study,” rendering it impermissible as an exemption to CO’s constitutional trapping ban.

Fatal flaws include:

- Lack of proper control (no bear/cougar killing);
- Subjective site selection creates selection bias;
- Sample size is too small to make robust, defensible inferences (not peer reviewable)

# The Plan Violates the Public Trust Doctrine

- CPW manages wildlife in the Public Trust. This obligates the Agency and the Commission to act in the best interest of the broader public, not the small minority of mule deer hunters.
- The public is broadly opposed to the proposed Plan, as evidenced at the Denver listening session and peer-reviewed literature. Moreover, the public is generally opposed to killing one species to purportedly benefit another.
- CPW's own information makes clear that the primary impact on mule deer survival and population is habitat destruction by the fossil fuel industry – the Commission should concentrate state resources on addressing and mitigating this threat.

# Constitutional Amendment 14

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- Passed by Colorado voters in 1996
- Intended to prohibit and make unlawful “taking” of wildlife by methods including leghold traps and snares, subject to certain exemptions. See Colorado Constitution Article XVIII § 12b(1).

# Plan Would Constitute Taking Wildlife

- “Take” means “to acquire possession of wildlife...” Colorado Revised Statutes § 33-1-102(43)
- “Possession” means “either actual or constructive possession of or any control over the object referred to.” Colorado Revised Statutes § 33-1-102(34).
- Therefore, take occurs the moment the animal’s movement is restricted and does not require that the trap, or anything else, kill the animal.

# Nonlethal Methods Exemption is Inapplicable

Allows taking of wildlife by “use of non-lethal snares, traps specifically designed not to kill, or nets...” for:

- Bona fide scientific research,
- Capturing a raptor to use for falconry,
- Relocating the trapped animal, or
- Medical treatment of the animal

pursuant to regulations established by the Commission. Colorado Constitution Article XVIII § 12b(2)(c); Colorado Revised Statutes § 33-6-206.



# Relevant Regulations

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CPW regulations refer to these exemptions (Colorado Revised Statutes § 33-6-206 ) as the “Nonlethal Methods Exemptions” in two places. See 2 Code of Colorado Regulations § § 406-302(B)(2), 406-900(c)(28).

# Bona Fide Scientific Research Exemption is Inapplicable

2 Code of Colorado Regulations § 406-1300(A) defines bona fide scientific research as:

“systematic investigative or experimental activities which are carried out for the purpose of acquiring **new and relevant** knowledge pertaining to wildlife biology, ecology or management, or the revision of accepted conclusions, theories, or laws in the light of newly discovered facts, **and which are conducted in a humane fashion** by qualified personnel, **and the results of which would meet the accepted standards for publication in a refereed scientific journal.**” (emphasis added)

The proposed Plan does not satisfy this exemption.



# Private Lands Exemption is Inapplicable

Amendment 14 allows taking wildlife by trap on private lands that are “primarily used for commercial livestock or crop production.” Colorado Constitution Article XVIII § 12b(3).

However, trapping on these private lands is limited to 30 days/year and “owner or lessee [must] present on-site evidence to the division of wildlife that ongoing damage to livestock or crops has not been alleviated by the use of non-lethal or lethal control methods which are not prohibited.” Colorado Constitution Article XVIII § 12b(3).

These requirements are clearly not met for oil and gas lands where the study would be conducted.



# Firearms Exemption is Inapplicable

Amendment 14 specifically applies “to the taking of wildlife with firearms . . . as authorized by law.”

Colorado Constitution Article XVIII § 12b(4).

However, as previously discussed, animals are already taken the moment they are trapped. Take occurs before the trapper even knows the trap has captured an animal, and well before a trapped animal is shot. This exemption is intended to exclude hunting and does not excuse shooting a trapped animal.



# Ban on Spring Black Bear Taking

- In 1992 Colorado citizens overwhelmingly voted to ban take of black bears in spring largely out of concern for killing bears with dependent young.
- Last year a bill was introduced in the legislature that would have allowed a spring bear hunt, but it was withdrawn due to public outrage.
- Take under the Plan would occur during the ban period.
- CPW has provided insufficient information to ensure bears with dependent young are not taken.

# Take of Endangered and Threatened Species

- Colorado law prohibits “any person” from taking any species listed as threatened or endangered under Colorado law. Colorado Revised Statutes § § 33-2-105(3), (4).
- Kit fox, wolverine, gray wolf, and Canada lynx are State endangered species that could be impacted. 2 Code of Colorado Regulations § 406-1002(A)(3).
- Take of federally protected species, including gray wolves and lynx, is likewise prohibited.
- Traps are largely indiscriminate, and traps set for bear or cougar could take protected species.



# Violations of Animal Welfare Act (AWA)

- Failure to comply with Animal Care and Use Committee (ACUC) guidelines provides no assurance that the Plan is in compliance with the AWA.
- Inconsistencies include:
  - Using hounds to capture mountain lions who have dependent young too young to climb trees;
  - No information on euthanasia and anesthesia protocols or indication that anesthesia, euthanasia, trap checks, traps, and snares will comply with ACUC guidelines;
- ACUC guidelines for bears were not provided by CPW, but there are likely similar inconsistencies.

# Violations of Federal Law

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While the aforementioned information indicates it would be illegal for the Commission to approve the Plan under state and federal law, we also note that if USDA Wildlife Services participates in the killing, its participation would be in violation of the Federal Endangered Species Act, National Environmental Policy Act, Animal Welfare Act, and other laws and regulations.



# Conclusion

- The proposed Plan caters to a special interest representing an extremely small minority of Colorado's citizenry and is emphatically inconsistent with the values of the vast majority of Coloradans.
- Should the Commission approve the proposed Plan in spite of its illegality, that approval would be arbitrary, capricious and contrary to law in violation of the Colorado Administrative Procedures Act and vulnerable to challenge.

Colorado Revised Statutes § 24-4-106(7).



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