



COLORADO

Parks and Wildlife

Department of Natural Resources

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TO: Members of the Colorado Parks and Wildlife Commission
FROM: Jonathan Boydston, Acting Regulations Manager
RE: Final Changes to Commission Policy on Citizen Petitions to Initiate Rulemaking for the September 2021 Parks and Wildlife Commission Meeting
DATE: August 20, 2021

Following the Commission discussion at the July meeting regarding the draft change to the Commission Policy on Citizen Petitions to Initiate Rulemaking, Division staff no longer recommend adopting the previously proposed change related to withdrawn petitions. Although staff do not seek any final Commission action in September, responses to the Commission's questions about the previously proposed change to the Commission Policy are summarized below. Furthermore, staff may request the opportunity in the future to present information to the Commission on withdrawn petition topics when appropriate. If there are questions about the agenda item below, or if additional information is needed, please feel free to contact me at jonathan.boydston@state.co.us.

Agenda Item 19: Citizen Petitions to Initiate Rulemaking - Colorado Parks and Wildlife Commission Policy

Requiring the written consent of the Division to withdraw a petition once a petitioner submits it to the Division

At the July Commission meeting, staff presented a draft change to the Citizen Petitions to Initiate Rulemaking Policy (Policy). The draft change to the Policy would allow a petitioner to withdraw a petition after it has been submitted to the Division only with the written consent of the Division. This would help to address issues with petitioners submitting and then withdrawing petitions after the Division has devoted resources to considering them, or after having received the Director's letter with the Division's stance on the petition and rationale.

Members of the Commission had additional questions about how this Policy change would be implemented and its impact on petitioners and the Division. First, it is important to note that the previously proposed change to the Policy would allow the Division to retain discretion about whether and how petitions are considered, as it simply clarifies that the discretion for withdrawing a petition after it has been submitted lies with the Division instead of the petitioner. Additionally, the option to withdraw a petition after it has been submitted to the Division is often not needed, because the Division often works with petitioners directly and early on to provide feedback and seek clarification on draft petitions.

Furthermore, there are many circumstances under which a request to withdraw a petition already under consideration is typically granted. For example:

- **Significant staff concerns:** when petitions are submitted that staff have concerns about, sometimes petitioners will accept staff concerns as either legitimate or insurmountable and make a request to withdraw the petition.
- **Staff supports the petition:** when petitions are submitted with which staff agrees, staff may propose rolling the proposed change into the Division's regulatory process, which negates the need for a petition. At this point, a petitioner may ask to withdraw their petition from consideration.
- **Addressing staff feedback:** Petitioners sometimes take staff feedback and request to withdraw the petition to allow additional time to modify, clarify, or otherwise revise the petition.



However, there are certain topics, which are persistent enough that action is called for, even if a request is made by the petitioner to withdraw a petition. This typically occurs with high-profile topics, which require considerable resources for the Division to address and which attract significant stakeholder interest. The petition to ban avocational trapping, which was considered by the Commission in March 2021, is a good example of this type of petition. The petitioner—the Humane Society of the United States—requested that its petition be delayed until the fall. Division staff devoted considerable time to addressing the petitioners concerns prior to its consideration by the Commission, and stakeholders from around the state were prepared to testify about the petition at the March Commission meeting. Furthermore, similar petitions had been submitted to the Commission in the past and had been withdrawn at the last minute. The Division felt it was best to consider the petition at the March meeting as scheduled, instead of delaying a Commission discussion of the petition to a later date.

Although staff no longer recommend adopting the Policy change at this time, there may be instances in the future when staff would like to request time to present information about withdrawn petitions when the petition pertains to a recurring topic that requires further discussion or when Division staff feels the Commission would benefit from learning more about topics contemplated by a withdrawn petition.

To summarize, the previously proposed modification to the Policy would clarify that the Division has the discretion to determine if a petition should be considered once submitted. In many cases, requests to withdraw a petition would be granted, but this change to the Commission's Policy would have clarified that staff has the ability to require a petition be considered by the Commission. However, staff no longer recommend adopting the previously proposed change and do not seek any final Commission action in September.

COLORADO PARKS AND WILDLIFE COMMISSION POLICY

Title: CITIZEN PETITIONS TO INITIATE RULEMAKING

Effective Date: ~~June 30, 2020~~

I. PURPOSE

Colorado law enables citizens to request agencies adopt, revise or repeal regulations. Agencies have substantial discretion to grant or deny such requests. If granted, a rulemaking process ensues. If denied, the citizen may seek judicial review of the agency's denial. This guidance provides a general overview of the processes applicable to such petitions.

II. AUTHORITY

C.R.S. 24-4-103. Rule-making - procedure - definitions - statutory citation correction

III. POLICY STATEMENT

The Parks and Wildlife Commission recognizes that public participation in decisions regarding the management of the state's wildlife and park resources is both desirable and necessary. Citizen petitions to initiate rulemaking are one of the many methods available to the public to allow for active engagement with CPW. A transparent procedure for the consideration of such petitions is essential to ensure fair and equitable treatment of such petitions. This policy is intended to inform the public about how to effectively introduce petitions to the Commission's regulatory process. In addition, a framework is established for the petitioner to set forth sufficient facts and supporting documentation to provide the Commission with the appropriate information to form the basis for Commission action.

IV. IMPLEMENTATION

A. Required Information

Petitions presented to the Commission must include the petitioner's name, contact information, a copy of the modified rule as proposed (preferably in redline format), and the rationale for the proposed rule change. The petition must be submitted in writing to the Division. Petitioners may contact Division staff for related forms, assistance with the process, or any other information necessary for

submission of a citizen petition.

B. Consideration of petitions

A petition is considered complete when it meets all of the requirements as outlined in #1606 of the Commission's regulations. Once a complete petition is received, the Director, in consultation with the Commission Chair, will determine the process and schedule for considering it, likely within the following guidelines:

- In order to maintain consistency in regulations and regulatory process, a citizen petition addressing a regulation passed, with full process, within the previous 12 months will be disfavored.
- In order to maintain consistency in regulations and regulatory process, petitions requesting consideration of regulations the Division opens on a periodic basis or for multi-year planning (e.g., the Division's Five-Year Big Game Season Structure) received outside the applicable review period will be disfavored. Petitioners wishing to address such issues will generally be asked to participate in the Division's next applicable planning process.
- Once a petition has been submitted to the Division, the petition can only be withdrawn by the petitioner with the written consent of Division staff.
- Resubmission of denied petitions will be disfavored until after a full calendar year, and generally considered only if new and substantial information has been added to the petition.

Within statutory guidelines, the Commission Chair, acting on behalf of the Commission, will determine when and how a petition is placed on the agenda for a specific Commission meeting. A petition may be placed on the main agenda or the consent agenda.

If the Division supports the petition, Division staff will recommend the petition for inclusion on a meeting agenda for the Commission's consideration and to proceed with rulemaking. Note: initiating rulemaking does not guarantee the passage or repeal of a rule. Instead, it initiates the process whereby the passage or repeal of a rule can, but not necessarily will, occur.

If the Division opposes the petition, Division staff will recommend placing the petition on the consent agenda for denial with a memo from the Director or Division personnel explaining such opposition. Petitioners will generally not be given time at the podium to present Division-opposed petitions. The Commission is not obligated to take public comment through dedicated agenda time; however, the public is always free to comment at meetings using

the Commission's general public comment procedures. The Commission is free to take a Division-opposed petition off the consent agenda, and subsequently, either affirm or overrule the staff recommendation, with or without hearing from the petitioner.

If the Division neither supports nor opposes the petition, the Director and Commission Chair will determine the process for consideration. This may or may not include feedback from or collaboration with the petitioner.

When a determination is made regarding the placement of a petition on a specific agenda, petitioners will be notified of that decision in advance. Staff may be requested to present its position on the petition to assist Commission deliberations.

If the Commission grants a citizen petition to initiate rulemaking, the petitioner and other stakeholders may be asked to work with staff to develop regulatory language and provide any other information or materials requested by the Commission. Within statutory guidelines, the Commission reserves the right to determine the schedule for moving the petition forward, including continuance beyond the regularly-scheduled two-step regulations process.

Denial of a petition constitutes final action by the Commission.

Any decision to support, reject, or modify a petition will be made based upon the information placed in the record.

Petitioners should be aware that signatures of supporters are not required for submission of a petition. Further, submission of multiple petitions asking for similar Commission action is disfavored, and such petitioners may be asked to coordinate their petitions.

Interpretative documents or general statements of policy, such as this guidance, are not meant to be binding as rules under the State Administrative Procedure Act. § 24-4-103(1), C.R.S.