

FINAL REGULATIONS - CHAPTER W-16 - PARKS AND WILDLIFE PROCEDURAL RULES

ARTICLE VI - Backcountry Search and Rescue

#1681. Rules and Operating Procedures for use of funds credited to the BSAR fund pursuant to §33-1-112.5(1)(c)(II) C.R.S.

A. The Backcountry Search and Rescue (BSAR) fund shall be administered by the Division of Parks and Wildlife (Division) pursuant § 33-1-112.5. C.R.S. and these regulations.

B. DEFINITIONS

- 1. Operational Expenses: Are those reasonable costs incidental to BSAR activities including, but not limited to: fuel, operating costs, repair, maintenance and rental of motor vehicles, fixed-wing aircraft, helicopters, snowmobiles, boats, horses, generators and any other equipment necessary or appropriate for conducting BSAR activities; reimbursement of mileage at the appropriate state rate; meals and room rental for personnel and any other similar expenses. Operational expenses do not include any salary, overtime or stipend paid to any person permanently employed by a BSAR agency or political subdivision of the state. Operational expenses do not include indirect operating expenses, such as stand-by costs of vehicles and equipment owned by a unit of local government.**
- 2. Eligible agency: Is a public or volunteer association providing specialized search and rescue services and resources authorized by a county sheriff or political subdivision.**
- 3. Eligible person: Is a person in possession of: a current and valid Colorado Parks and Wildlife (CPW) hunting or fishing license; a vessel, snowmobile or off-highway vehicle currently registered through the Division of Parks and Wildlife or a current and valid Colorado Outdoor Recreation Search and Rescue Card.**
- 4. Eligible BSAR Incident: Mobilization of persons or agencies with specialized search and rescue skills authorized by a County Sheriff or political subdivision of the State of Colorado for one or multiple purposes in section §33-1-102(1.3)(a),(b),(c), or (f), C.R.S.**
- 5. Eligible Reimbursement Request: Request for payment of operational expenses of an eligible BSAR incident for an eligible person as certified by the sheriff of the county in which the incident took place.**

C. LIMITATION OF PAYMENT OF REQUESTS FOR REIMBURSEMENT.

- 1. The Backcountry Colorado Search and Rescue Fund will make no payment for BSAR expenses already paid or reimbursed by another source such as victims compensation, private insurance, or donations made for the purpose of paying for a specific search. Donations of a general nature, not covering expenses of a specific search, shall be excluded from this limitation. Should an eligible agency receive payment from another source after having received payment from the BSAR Fund for the same BSAR Incident, that agency shall reimburse the BSAR Fund an amount equal to the amount of payment received from the other source.**
- 2. No reimbursement requests shall be paid for BSAR activities for which a river outfitter is liable pursuant to the provisions of section §33-32-108(2), C.R.S., unless such liability has been lawfully discharged.**

3. Searches for or recovery of property are not eligible incidents and are not reimbursable through the BSAR Fund.
4. The Division shall not make payment when an insurance policy exists that will cover costs incurred. Payments may be used to pay insurance deductibles.
5. The Division shall not make payment to victim's compensation, individuals, or eligible persons. Payments are solely made to eligible agencies for costs incurred by those agencies or subdivisions in performing BSAR incidents.
 - a. Costs may include those for contracted resources or expenses incurred and requested for reimbursement by volunteers.
6. The BSAR Fund is not an insurance fund for eligible persons. It does not pay subjects. It does not cover medical expenses or medical transport fees. The use of an air ambulance as a search and rescue incident resource is not considered medical transport. All or portions of air ambulance bills considered elements of an "eligible search and rescue incident" as defined herein, are eligible for payment by the BSAR Fund.
7. The Division will not make payment for the search, rescue, or recovery of persons engaged in illegal activities or persons eluding law enforcement authorities.

D. INCIDENT REIMBURSEMENT PROCEDURES:

1. General request provisions:

- a. All reimbursement requests from eligible agencies having incurred reimbursable costs in a BSAR incident within the State of Colorado must be filed with the sheriff in the county where the BSAR activities occurred.
- b. The sheriff shall be responsible for certifying and submitting the request for reimbursement to the Division, and for the proper distribution of BSAR Fund money to all agencies and political subdivisions approved for reimbursements.
- c. All such reimbursement requests must be certified and submitted to the Division within 60 days of the completion of the search and rescue operation.
 - i. The 60-day filing requirement may be waived for good cause shown. Failure to submit a certified reimbursement request within 60 days of the completion of a BSAR operation because of other reasons not due to the filer's lack of diligence shall be considered "good cause."
 - ii. Reimbursement requests received after June 30 of any year will be processed in the following fiscal year and are subject to the funding levels of that fiscal year.
 - iii. As soon as practical after submission, the Division shall consider each reimbursement request. The Division shall review each request to determine if the actual operating costs requested are reimbursable pursuant to statute, regulations and procedures. In no event shall any payment be made that is not authorized by statute.

2. Payment provisions:

- a. Upon receipt of a BSAR incident reimbursement request, the Division shall determine if all expenditures requested for reimbursement are eligible. If the Division determines all expenditures requested are reimbursable, it shall submit a request to the Division Accounting Office for issuance of a payment.
- b. Partially completed reimbursement requests or requests omitting required reimbursement information will be returned to the Sheriff.
- c. At the end of the State Fiscal Year, as funds are available, all eligible reimbursement requests for ineligible persons shall be paid pursuant to §33-1-112.5(6), C.R.S.

E. BACKCOUNTRY SEARCH AND RESCUE COUNCIL

1. The Backcountry Search and Rescue Council will be composed of the following members:
 - a. 3 - elected county sheriffs
 - b. 2 - members of Colorado Search and Rescue Association
 - c. 2 - employees of the Division
 - d. 2- At-large members
2. All council members must be appointed to the council by the Division Director
3. The Backcountry Search and Rescue Council shall meet to discuss reimbursements and the distribution of grant funds from the BSAR fund in accordance with §33-1-112.5,CRS, in conjunction with analysis and consultation with Division staff.
 - a. The Division Director, or their designee, will give final approval for all reimbursements and distribution of funds.

ARTICLE VII - GRAY WOLF INJURIOUS HAZING AND LETHAL TAKE PERMITS

#1690 - PROCEDURES FOR APPLYING FOR AND APPEALING A DENIED GRAY WOLF PERMIT

- A. Applications to conduct activities requiring express authorization from the Division under state law, including Chapter W-10, #1000.A.11 or #1001.B or #1001.C, such as applications for authorization to injuriously or lethally take gray wolves, including retroactive authorization for take of wolves caught in the act of attacking livestock or working dogs, must be filed in the relevant CPW Area Office or via email at wolf.permits@state.co.us on an application form provided by the Division. The relevant CPW Area Office means the CPW office having administrative responsibility over some or all of the lands where the claimed wolf depredation at issue occurred, or is occurring, as shown on the Areas, Districts, and Office Locations map on the CPW website, available at https://cpw.state.co.us/learn/Maps/CPW_Districts.pdf.
- B. The Region Manager responsible for the lands identified in the application will review such an application promptly and after consulting with the Director of the Division, will issue a written notice of the action taken by the agency. If the application for authorization is denied, the grounds therefor shall be given to the applicant ("Region Manager Decision"). The giving of such notice shall be via mail to the same address as shown on the application. Such notice will be provided via email if the applicant provided an email address on their permit application. If mailed, the Region Manager Decision must contain a certificate of mailing evidencing when the decision was mailed to the applicant and is effective upon mailing. If emailed, the Region Manager Decision is effective upon transmission by the Division.

- C. Subject to paragraph G below, if the application is denied in the Region Manager Decision, the applicant may appeal the Region Manager Decision to the Commission by filing a written notice of appeal with the Commission within thirty (30) days of the applicant's receipt of the Region Manager Decision, but no later than 45 days from the effective date of the Region Manager Decision. The notice of appeal must be sent to "CPW Wolf Permit Appeals – Attention Commission Appeals" 6060 Broadway, Denver, CO 80216. If a timely appeal is not made to the Commission, the Region Manager Decision shall become final.
- D. The notice of appeal must contain contact information for the applicant, state the legal and factual reasons why the application should be granted, and identify the relief sought by the applicant. The notice of appeal must contain all documents and information necessary for the applicant to meet their burden of proof.
- E. The Commission will review the appeal at its next regularly scheduled meeting and issue a written decision ("Commission Decision"). Provided, however, the applicant may request an earlier hearing. The Division Director or their designee will notify the applicant of the Commission Decision in the same manner as provided for in the Region Manager Decision. If mailed, the Commission Decision is effective upon mailing. If emailed, the Commission Decision is effective upon transmission by the Division Director or their designee. At the time of filing the appeal, the applicant may provide other written materials in support of their appeal but, unless ordered by the Commission Chair, oral testimony will not be accepted.
- F. The Commission Decisions constitute final agency action.
- A-G. Nothing in these rules enables any person to file a notice of appeal over a Region Manager Decision denying a permit application seeking retroactive authorization for take of gray wolves caught in the act of attacking livestock or working dogs pursuant to chapter W-10, #1001.B; such a decision constitutes final agency action subject only to appeal as authorized by § 24-4-106, CRS (judicial review).

Basis and Purpose:

Adopting Backcountry Search and Rescue Regulations

In 2021 and 2022, the Colorado state legislature passed multiple Backcountry Search and Rescue (BSAR) related bills with different objectives and funding sources. House Bill 21-1326 allocated funds to help cover BSAR related equipment and needs. Senate Bill 21-245 (Keep Colorado Wild Act) will allocate up to \$2.5 million annually for BSAR operations and equipment generated by the sales of state parks passes. Additionally, in 2022, SB22-168 allocated \$1 million to CPW to help bridge BSAR funding until KCW money comes on board and moved the administration of the BSAR fund from the Department of Local Affairs to Colorado Parks and Wildlife - effective January 1, 2023. As of January 1, 2023, these funding sources are housed within CPW's Field Services Branch.

As part of the BSAR transfer from DOLA to CPW, DOLA Backcountry Search and Rescue rules and regulations were transferred into CPW's scope for administration in the original format (legislatively adopted by CPW in 2023). These regulations have been converted from their DOLA format into CPW format and modified to update language to reflect the CPW director and CPW processes, and the creation of a "BSAR Council".

Wolf Related Permit Applications and Appeals

This statement sets forth the basis, specific statutory authority, and purpose for new and amended regulations of the Colorado Parks and Wildlife Commission (Commission). In adopting the new and amended regulations, the Commission relied upon the entire administrative record for this rulemaking proceeding. The specific statutory authority for the new and amended W-16 rules includes § 33-2-105.8, CRS, § 33-1-111, CRS, and § 33-1-104(1), CRS.

Colorado voters approved Ballot Initiative 114 in the November 2020 state election. The measure is now codified at § 33-2-105.8, CRS, as amended by [HB 21-1243](#). The law directs the Commission to restore the gray wolf (*Canis lupus*) to the state and, among other things, assist "owners of livestock in preventing and resolving conflicts between gray wolves and livestock." § 33-2-105.8(2)(E)(I), CRS.

In this rulemaking, CPW adopted new substantive regulations codified in Chapter W-10 (Nongame Wildlife). Such regulations enable owners of livestock to file applications with CPW seeking to injuriously or lethally take gray wolves, including applications seeking retroactive authorization for the take of wolves caught in the act of attacking livestock or working dogs.

These amendments to Chapter W-16 are procedural and codify the filing and review requirements for wolf related permit applications and appeals.

The statements of basis and purpose for these regulations can be obtained from the Colorado Division of Parks and Wildlife, Office of the Regulations Manager by emailing dnr_cpw_planning@state.co.us or by visiting the Division of Parks and Wildlife headquarters at 6060 Broadway, Denver, CO, 80216.

The primary statutory authority for these regulations can be found in § 24-4-103, C.R.S., and the state Wildlife Act, § 33-1-101 to 33-6-209, C.R.S., specifically including, but not limited to: § 33-6-106, C.R.S. and §33-1-106(1)(a), C.R.S.

EFFECTIVE DATE - THESE REGULATIONS SHALL BECOME EFFECTIVE JULY 1, 2023 AND SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL REPEALED, AMENDED OR SUPERSEDED.

APPROVED AND ADOPTED BY THE PARKS AND WILDLIFE COMMISSION OF THE STATE OF COLORADO ON THIS 3RD DAY OF MAY, 2023.

APPROVED:
Carrie Besnette Hauser
Chair

ATTEST:
Marie Haskett
Secretary

Phil Weiser
Attorney General

Natalie Hanlon Leh
Chief Deputy Attorney General

Shannon Stevenson
Solicitor General

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Tracking Number: **2023-00192**

**OPINION OF THE ATTORNEY GENERAL RENDERED IN
CONNECTION WITH THE RULES ADOPTED BY THE
Colorado Parks and Wildlife (406 Series, Wildlife)
ON 05/03/2023**

**2 CCR 406-16
CHAPTER W-16 - PARKS AND WILDLIFE PROCEDURAL RULES**

The above-referenced rules were submitted to this office on 05/11/2023 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

May 22, 2023 10:13:24 MST

A handwritten signature in blue ink, appearing to read "Philip J. Weiser".

Philip J. Weiser
Attorney General
by Kurtis Morrison
Deputy Attorney General