



COLORADO

Parks and Wildlife

Department of Natural Resources

Director's Office
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TO: Mr. Daniel Akerhielm

RE: *August 19, 2020 petition to repeal Colorado Parks and Wildlife regulation W-9, #900(C)(1); 2 Colo. Code Regs. § 406-9:900(C)(1), regarding access to State Wildlife Areas*

Dear Mr. Akerhielm:

Colorado Parks and Wildlife (“CPW”) is in receipt of your petition to repeal the above-referenced regulation (“Petition” and “SWA Regulation”). CPW denies the Petition for the reasons stated below.

As explained below, CPW has already convened a working group to reevaluate the regulation at issue. CPW values public input on its wildlife management decisions and encourages you to participate in all future CPW rulemaking proceedings, including those concerning the SWA Regulation.

BACKGROUND

On April 30, 2020, CPW adopted the SWA Regulation, which requires all persons 18 years of age and older to purchase a valid hunting or fishing license to access any State Wildlife Area (“SWA”). The regulation applies to more than 350 SWAs across the state. By statute, SWAs are properties held by CPW for the “benefit of wildlife populations or for wildlife-related recreation.” § 33-1-102(42), CRS. The SWA rule does not apply to CPW’s 42 state parks.

CPW adopted the regulation in an effort to curb recreational activities occurring on SWAs that disturb and displace wildlife. In recent years, CPW had witnessed a growing trend of the general public using such areas as free camping or hiking destinations. Such use was often promoted by third-party websites advertising SWAs as allowing free access. Heavy use resulted in adverse impacts to wildlife and wildlife habitat. Raising revenue was not the purpose of the SWA Regulation.



On June 10, 2020, the SWA Regulation was published in the Colorado Register. See 43 CR 11 at 805, 857 (available at <https://www.sos.state.co.us/CCR/RegisterHome.do>).

On June 30, 2020, the Regulation took effect. *Id.* at 804.

On July 16-17, 2020, CPW held its regularly-scheduled meeting. At that meeting, members of the public expressed concern over the SWA Regulation. CPW Commissioners also expressed concerns over the regulation and discussed how it may be improved in the future, while preserving associated federal funding, which is a critical component of CPW's operations.¹ The CPW Commission instructed me, as the head of the Division of Parks and Wildlife, to discuss alternative access fees with the U.S. Fish and Wildlife Service ("USFWS"). USFWS, subject to numerous restrictions and limitations, provides matching funds for CPW wildlife license sales that may be used for the purchase of SWAs.

On August 19, 2020, you filed the Petition, after the SWA Regulation had been in force for less than two months.

On September 2-3, 2020, CPW held its regularly-scheduled meeting. At that meeting, I provided an update to the CPW Commission on my discussions with USFWS, and the Commissioners engaged in an extended policy discussion on how to offer SWA access to individuals who do not wish to purchase a hunting or fishing license, while preserving the significant federal funding that was used to purchase most SWAs.² The outcome of that discussion was to form a working group to formulate recommendations on how to revise the SWA Regulation. More information on the working group is attached as **Exhibit 1**. As stated in **Exhibit 1**, I expect the working group to remain in place until approximately March 2021.

DISCUSSION

CPW Commission's regulation concerning citizen petitions is W-16, #1606. The CPW Commission's policy implementing this regulation is available at https://cpw.state.co.us/Documents/Commission/policy_procedures/POLICY-Public_Rulemaking_Petitions.pdf. The policy states, among other things, that "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." *Id.*, ¶ IV(B). Denial of a petition constitutes final action by the Commission. *Id.*, p. 3. The Division recommends the CPW Commission deny the Petition via the consent agenda for the following reasons. If adopted, this recommendation will become the order of the CPW Commission denying the Petition and will be effective upon mailing.

¹ The CPW Commission discussion occurred on day two of the July meeting at 2:43 and is available here: <https://cpw.state.co.us/aboutus/Pages/CommissionMeeting2020-7.aspx>.

² The CPW Commission discussion occurred on day two of the September meeting at 15:40 and is available at <https://cpw.state.co.us/aboutus/Pages/CommissionMeeting2020-9.aspx>.

Repealing the SWA Regulation now with no replacement would be premature, and likely result in adverse impacts to wildlife and wildlife habitat. At each of the meetings referred to above, the CPW Commissioners showed a desire to revise the SWA Regulation, but do so in a careful and methodical way. The working group was established in order to assure that any revised regulation would be the product of broad stakeholder input. Many groups, particularly hunters and anglers, are largely supportive of the current regulation because prior license sales account for the majority of funding used to purchase such properties. Repealing the regulation immediately would disserve their interests.

Similarly, it would be inequitable to members of the non-fishing and non-hunting public who purchased a wildlife license since June 30, 2020 for no reason other than gaining access to SWAs this year. Repealing the SWA Regulation with no replacement would also give rise to the same adverse impacts that necessitated the regulation in the first place, which should be avoided. The working group should be given adequate time to adequately analyze the complex issues at play and develop appropriate recommendations for a future regulation revision.

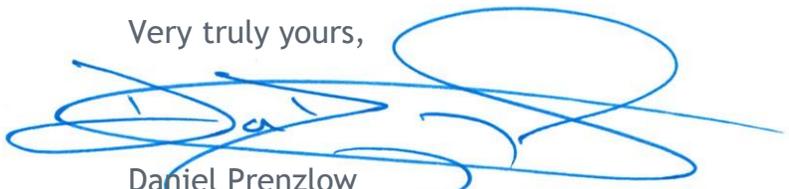
Lastly, your Petition is flawed because it alleges CPW lacks statutory authority to control the properties it owns or manages, including charging a fee for access. To the contrary, CPW has statutory authority to condition public access to SWAs on the user's payment of reasonable fees or charges under § 33-1-105(1)(c), CRS, which states:

The commission has power to: ... Construct or otherwise establish public facilities and conveniences at any site or on any land in which the commission holds an interest and operate and maintain all such lands, facilities, and conveniences and provide services with respect thereto, and, when appropriate, make reasonable fees or charges for their use or enter into contracts for their maintenance or operation.

Id. (emphasis added); *see also*, § 33-1-107(1)(b), CRS (Regulation of areas under wildlife commission control).

Thank you for your interest in CPW and your interest in this important topic.

Very truly yours,



Daniel Prenzlow
Director, Division of Parks and Wildlife

EXHIBIT 1

Director Working Group Letter and List of Representatives

Dear Representative,

As I look at the nexus and complex relationship that conservation and recreation have with one another I realize that we need additional support and perspectives to find solutions and paths forward for Colorado's natural resources and recreational opportunities. When we decided to look at the use of our State Wildlife Areas as a starting point we knew this was going to be challenging, and understand that the decision made by the Colorado Parks and Wildlife earlier this year caught some people by surprise. With that in mind, it is very important to me as the Director of Colorado Parks and Wildlife to convene a working group to help shape this conversation on how we reduce impacts to these particular properties while implementing a new product for non-hunting/non-angling visitors who should help with maintaining these properties.

Funding is one piece of a complicated conversation, but it is secondary to CPW's goals for these properties. For decades we have managed State Wildlife Areas to accommodate multiple forms of recreation, but with today's population growth and popularity in recreational opportunities the conflict of conservation needs and recreation requirements is blaring. These properties are first and foremost intended for wildlife and the conservation of their habitat. They were set aside with very specific agreements between CPW and the federal government. This is important to note, because members of this working group will need to understand the premise of these agreements as we work through this effort. It is also important for everyone to understand that these properties were paid for with money from hunting and fishing licenses. Contrary to some people's opinion, hunters and anglers have been the foundation of conservation and wildlife management in Colorado and across the nation for over a century. It is my goal for this working group to help tackle the hard conversations Coloradans need to have about protecting wildlife and reducing our pressure on the landscape. This group will also need to balance the needs of people and the communities surrounding these spaces.

Based on many discussions within our leadership team and your extensive experience and background we believe you would be an excellent candidate for our State Wildlife Area working group.

I would like to invite you to be a participant in the working group until approximately March 2021. These meetings will mostly be online via zoom. They will be facilitated by a moderator which I am in the process of working to obtain. My goal for this group is to come to final recommendations for the Colorado Parks and Wildlife Commission to consider for implementation next year. I know this will be a challenging conversation, but one that is very important to me and for Colorado's future. We will need to work together and find common solutions.

I appreciate your consideration and look forward to your response.



Thanks, Dan

Purpose: This workgroup is not a decision-making body, but is convened to provide recommendations to Colorado Parks and Wildlife to assist in moving forward with reducing recreation pressure and implementation of a new pass or permit.

Group / Organization	Representative
Commissioners	Eden Vardy, Luke Schafer, & Marie Haskett
CPW Leadership	Lauren Truitt & JT Romatzke
CPW SWA Working Group Representative	Mark Lamb
Habitat Stamp Committee - Chairman	Dan Gates
Wildlife Council - Chairman	Andy Neinas
CO Mountain Club	Julie Mach
Rocky Mountain Elk Foundation	Luke Wiedel
Colorado Trout Unlimited	David Nickum
Outdoor Buddies	Larry Sanford
OREC	Nathan Fey
Wildlife Habitat Non-Consumptive	Bob Dean
Colorado River Outfitters Association	David Costlow
Next 100 Coalition	Gabriel Otero
Colorado Wildlife Federation	Suzanne O'Neill
COHVCO	Scott Jones
Sportsperson's Roundtable	Ron Goodrich
State Land Board	Abraham Medina
County Commissioner	Greg Felt

CPW Communication Support	Travis Duncan
Attorney General Rep	Chris Breidenbach (legal support)