

CHAPTER W-16 - PARKS AND WILDLIFE PROCEDURAL RULES

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CHAPTER W-16 - PARKS AND WILDLIFE PROCEDURAL RULES

ARTICLE I - MEETINGS

#1601 - Conduct of Meetings

See Article 4 of Title 24, CRS, for rule making and other applicable meeting and hearing requirements

A. Regular Meetings

1. Public Presentation - In addition to normally scheduled opportunities to testify on matters before the Commission, persons or groups wishing to participate in a regular Commission meeting may request to be placed on the agenda by submitting a written request to the Director at least 30 days before the meeting. The public may participate during the meeting at the discretion of the Chairman or presiding officer.

B. Adjudicatory Hearings

1. Review of Game Damage Settlements and Claim Denials

See §§ 33-3-101 to 204, CRS, for additional detail and requirements

- a. Game Damage Claims Settled by Agreement Between Claimants and the Division
 - 1) Only settlements of game damage claims equaling or exceeding \$5,000 in total value must be reviewed by the Commission, and then only where the damage is something other than forage loss to wild ruminants on privately owned or leased private land. All other settlements may be paid by the Division without Commission review.
 - 2) Review will be based on the written materials and documentary evidence provided to the Commission by the Division and, unless the Commission directs otherwise, there will be no oral presentations or further submittals to the Commission on the settlement.
 - 3) Except as may otherwise be directed by the Commission, game damage settlements will be reviewed at the next regular meeting of the Commission following their receipt, provided the settlement, together with its supporting materials and documentation, is received by the Commission at least thirty days prior to the meeting. The settlement will be placed on the consent agenda unless the claimant makes an oral presentation to the Commission pursuant to #1601.A.1.
- b. Game Damage Claims Recommended for Denial by the Division
 - 1) Any claimant seeking or otherwise requiring Commission review of a game damage claim recommended for denial by the Division, or a game damage claim where the claimant and the Division have otherwise failed to reach a settlement, shall file a written request for review with the Commission. The requirement for a written request for review applies to all claimants, including claimants that have waived arbitration of a forage loss to wild ruminants on privately owned or leased private land. Such request for review shall be mailed to the Commission within ten (10) days of claimant's receipt of the Division's written notice of denial or offer of settlement unacceptable to the claimant.
 - 2) The request for review shall include:
 - a. the claimant's name, address and telephone number;
 - b. a narrative statement of the claim, including the amount at issue and a complete statement of the factual and statutory basis supporting payment of the claim as requested;

- c. copies of the ten (10) day notification(s) and proof of loss filed with the Division;
 - d. copies of the written documentation submitted with, and in support of, the proof of loss;
 - e. any other documentary evidence supporting the claim or disputing the grounds stated as the basis for the Division's action in its notice of denial or offer of settlement, including photographs, and;
 - f. any other written materials supporting the claim or disputing the grounds stated as the basis for the Division's notice of denial or offer of settlement, including signed statements by third party witnesses.
- 3) Commission review will be based on the request for review and any written materials or documentary evidence provided to the Commission by the Division in response to the request for review submitted by the claimant, and unless the Commission directs otherwise, there will be no oral presentations or further submittals to the Commission.
 - 4) Except as may otherwise directed by the Commission, such claims will be reviewed at the next regular meeting of the Commission following their receipt, provided the request for review is received by the Commission at least thirty days prior to the meeting. The denial will be placed on the consent agenda unless the claimant makes an oral presentation to the Commission pursuant to #1601.A.1.

2. License Suspension Appeals

See § 33-6-106, CRS for additional detail and requirements

- a. All license suspensions will be heard initially and decided by a Commission hearing examiner. A copy of the hearing examiner's initial decision shall be sent to the licensee by certified mail, return receipt requested, to the last known address of such person. The hearing examiner's initial decision shall advise the licensee of their right to appeal the initial decision to the Commission. Any person seeking or otherwise requiring Commission review of the hearing examiner's initial decision shall file a written notice of appeal with the Commission within thirty (30) days of the licensee's receipt of the hearing examiner's initial decision, but no later than 45 days from the date contained in the certificate of service accompanying the initial decision. The notice of appeal must be sent to "CPW License Appeals" 6060 Broadway, Denver, CO 80216. If a timely appeal is not made to the Commission, the hearing examiner's initial decision shall become final, effective 45 days from the date contained in the certificate of service accompanying the initial decision. If a timely appeal is made to the Commission, the hearing examiner shall send notice to the licensee of the date of their scheduled hearing before the Commission and advise that the hearing examiner's initial decision to suspend is automatically stayed pending Commission review and final action.
- b. The notice of appeal shall include:
 - 1) the person's name, address, telephone number and case file number;
 - 2) a narrative statement of the person's position, including a complete statement of the factual and statutory basis supporting relief from the decision of the hearing examiner and the relief requested;
 - 3) copies of any written documentation or documentary evidence submitted to the hearing examiner;
 - 4) copy of the hearing examiner's decision, including the findings of fact and conclusions of law, and;
 - 5) a copy of the transcript of the hearing on the suspension of license privileges conducted by the hearing examiner. The person requesting review shall be responsible for the production of the transcript.

- c. Commission review will be based on the notice of appeal and any additional written materials and documentary evidence provided to the Commission by the hearing examiner in response to the notice of appeal, and unless the Commission directs otherwise, there will be no oral presentations or further submittals to the Commission.
- d. Except as may otherwise be directed by the Commission, license suspensions will be reviewed at the next regular meeting of the Commission following their receipt, provided the notice of appeal is received by the Commission at least thirty days prior to the meeting. The appeal will be placed on the consent agenda unless the licensee makes an oral presentation to the Commission pursuant to #1601.A.1. The final decision of the Commission is effective upon mailing to the licensee and must contain a certificate of mailing.
- e. Written notice of the final decision of the commission shall be sent to the licensee by certified mail to the last known address of such person. The notice shall advise the licensee that he or she may appeal the Commission's suspension decision to the state district court as provided in § 24-4-106, C.R.S., by bringing an action for judicial review within 35 days after such action becomes effective.
- f. When deciding upon the duration of any license privileges suspension term, the hearing examiner will consider the facts of the underlying violation(s) giving rise to the criminal conviction(s) and the administrative license suspension hearing, along with all relevant written materials and documentary evidence contained in the Division's records, all written materials and documentary evidence provided by the party prior to the administrative license suspension hearing, and all evidence provided during the hearing, and will give specific consideration to the absence or presence of the following factors:
 - 1) Whether the violation(s) caused or resulted in the take of wildlife, injury or death of a person, or damage to or destruction of public or private property;
 - 2) The number of violations arising from the same transaction or occurrence;
 - 3) Whether the violation(s) involved the take of species listed as endangered, threatened or of special concern;
 - 4) Whether the violation(s) involved the take of trophy wildlife;
 - 5) Whether the violation(s) showed an intentional, knowing, or negligent disregard for wildlife or public safety;
 - 6) Whether the violation(s) involved intentional, knowing or negligent action on behalf of the party;
 - 7) Whether the party has any prior violations of wildlife statutes or regulations, or violations of state or federal law committed while hunting, fishing, or engaging in a related activity;
 - 8) Whether the party has any prior license suspensions;
 - 9) Whether the violation(s) occurred while the party was subject to a prior suspension or otherwise unlicensed;
 - 10) Whether the violation(s) involved any assault or threat to or resisting a peace officer;
 - 11) Whether the party self-reported the violation(s) or otherwise attempted to remedy or ameliorate the harm caused by the violation(s);
 - 12) The experience and age of the party and other social factors or circumstances associated with the violation(s);
 - 13) Whether the party interfered with or hindered the investigation of the violation(s);
 - 14) The criminal penalties imposed as part of the violation(s);
 - 15) Whether the party acted alone or in concert with other parties;
 - 16) The species and the number of wildlife taken, and;
 - 17) Whether the violation(s) involved any specified illegal manner of take (use of bait, traps, snares, poison, etc.).

Based on all the evidence presented, the hearing examiner will determine the weight to be given to any factor and that factor's effect on the duration of the suspension term.

3. Mid-Suspension Review

- a. Except as specified in subsection b. of this regulation, any person who has had their privilege of applying for, purchasing, or exercising the benefits conferred by any or all licenses issued by the division pursuant to articles 1 to 6 of title 33 ("license privileges") may file a petition for mid-suspension review seeking to modify the expiration date of their suspension. Such petitions may be filed once every five years either:
 - 1) After half of a suspension of at least 20 years, but less than a lifetime, has elapsed; or
 - 2) After fifteen years of a lifetime suspension have elapsed.
- b. Applicability
 - 1) Any person who has had their license privileges suspended by the commission for less than 20 years may not file a petition for mid-suspension review.
 - 2) Any person who has had their license privileges suspended by the commission on two or more occasions may not file a petition for mid-suspension review.
 - 3) Any person who has been convicted of wildlife violations of another state, or any Canadian province, United States territory, or federal agency which is a member of the "Wildlife Violator Compact," §§ 24-60-2601 – 2604, CRS, since the date of the hearing examiner's initial decision entered pursuant to § 33-6-106(7), CRS, may not file a petition for mid-suspension review.
 - 4) Any person who has been charged with wildlife violations of another state, or any Canadian province, United States territory, or federal agency which is a member of the "Wildlife Violator Compact," §§ 24-60-2601 – 2604, CRS, since the date of the hearing examiner's initial decision entered pursuant to § 33-6-106(7), CRS, may not file a petition for mid-suspension review until such charges are finally resolved.
- c. Contents of petition for mid-suspension review and course of proceedings
 - 1) The petition for mid-suspension review must include an affidavit signed by the petitioner under penalty of perjury stating:
 - a. The petitioner has not had their license privileges suspended by the commission on two or more occasions;
 - b. The petitioner has not been convicted of wildlife violations of another state, or any Canadian province, United States territory, or federal agency which is a member of the "Wildlife Violator Compact," §§ 24-60-2601 – 2604, CRS, since the date of the hearing examiner's initial decision entered pursuant to 33-6-106(7), CRS; and,
 - c. There are no pending charges against the petitioner for wildlife violations of another state, or any Canadian province, United States territory, or federal agency which is a member of the "Wildlife Violator Compact," §§ 24-60-2601 – 2604, CRS.
 - 2) The petition for mid-suspension review must include a detailed justification for the request. Time served on the suspension, and/or financial penalties incurred do not constitute good cause for modifying the expiration date of any suspension.
 - 3) The petition for mid-suspension review must demonstrate the petitioner's ongoing and concerted efforts to ameliorate the harm caused by their violation(s) in the form of education, mentoring, volunteering, wildlife conservation efforts, or other means.
 - 4) The division may file a response to the petition. Unless the commission directs otherwise, there will be no oral presentations or further submittals to the commission and the petition will be placed on the consent agenda with an appropriate recommendation by the Director.
- d. Standard of review: The commission, in its discretion, may modify the duration of a previously-imposed license suspension if the petitioner proves the duration of their original suspension no longer serves the remedial purpose of protecting the state's wildlife. The

commission shall consider the totality of the circumstances, which include, but need not be limited to, the following factors:

- 1) The credibility of the petitioner's written statements or testimony, if any;
- 2) The credibility of written statements by third parties;
- 3) The adequacy of petitioner's ameliorative efforts;
- 4) The risk of future wildlife offenses; and,
- 5) Aggravating or mitigating factors leading to the original suspension.

4. Review of Petitions for Declaratory Orders

See §§ 24-4-105(11), CRS for additional detail and requirements

- a. Any person may petition the Commission for a declaratory order to terminate a controversy or to remove uncertainty as to the applicability to the petitioner of any statutory provision or any rule or order of the Commission.
- b. The petition must be in writing and shall include:
 - 1) the petitioner's name, address and telephone number;
 - 2) the statutory provision, rule or order at issue;
 - 3) a narrative statement of all facts necessary to show the nature of the controversy or uncertainty and the manner in which the statutory provision, rule or order applies or potentially applies to the petitioner;
 - 4) whether the petitioner holds any permits, passes, or registrations issued pursuant to Articles 10 through 15 of Title 33, C.R.S., as amended.
- c. The Commission will determine, in its discretion and without notice to the petitioner, whether to rule upon the petition. In determining whether to rule upon a petition filed pursuant to this regulation, the Commission will consider the following matters, among others:
 - 1) Whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to the petitioner of any statutory provision or of any regulation of the Commission.
 - 2) Whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Commission or a court involving one or more of the petitioners.
 - 3) Whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Commission or a court but not involving the petitioner.
 - 4) Whether the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion.
 - 5) Whether the petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to Rule 57, Colorado R. Civ. P., which will terminate the controversy or remove any uncertainty as to the applicability to the petitioner of the statute, regulation, or order in question.
- d. Commission review, if any, will be based on the petition and any additional written materials and documentary evidence provided to the Commission by the Division in response to the petition, and unless the Commission directs otherwise, there will be no oral presentations or further submittals to the Commission.

- e. Except as may otherwise be directed by the Commission, petitions for declaratory orders will be reviewed at the next regular meeting of the Commission following their receipt, provided the petition is received by the Commission at least thirty days prior to the meeting.
- f. If the Commission determines that it will rule on the petition, the following procedure will apply:
 - 1) The Commission may rule upon the petition based solely upon the facts presented in the petition. In such a case:
 - i. Any ruling of the Commission will apply only to the extent of the facts presented in the petition and any amendment to the petition.
 - ii. The Commission may order the petitioner to file a written brief, memorandum or statement of position.
 - iii. The Commission may set the petition, upon due notice to petitioner, for a non-evidentiary hearing.
 - iv. The Commission may dispose of the petition on the sole basis of the matters set forth in the petition.
 - v. The Commission may request the petitioner to submit additional facts in writing. In such event, such additional facts will be considered as an amendment to the petition.
 - vi. The Commission may take administrative notice of the facts pursuant to the State Administrative Procedure Act and may utilize available experience, technical competence and specialized knowledge in the disposition of the petition.
 - vii. If the Commission rules upon the petition without a hearing, it shall promptly notify the petitioner of its decision and the reasons for such action.
 - 2) The Commission may, in its discretion, set the petition for hearing, upon due notice to the petitioner, for the purpose of obtaining additional facts or information or to determine the truth of any facts set forth in the petition or to hear oral argument on the petition. The notice to the petitioner setting such hearing shall set forth, to the extent known, the factual or other matters into which the Commission intends to inquire. For the purpose of such a hearing, to the extent necessary, the petitioner shall have the burden of proving all of the facts stated in the petition, all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statutory provision, rule or order in question applies or potentially applies to the petitioner and any other facts the petitioner desires the Commission to consider.
- g. The parties to any proceeding pursuant to this regulation shall be the division and the petitioner. Any other person may seek leave of the Commission to intervene in such a proceeding, and leave to intervene will be granted at the sole discretion of the Commission. A petition to intervene shall set the same matters as required by # 600-4. Any reference to "petitioner" in this regulation also refers to any person who has been granted leave to intervene by the Commission.
- h. Any declaratory order or other order disposing of a petition pursuant to this regulation shall constitute final agency action subject to judicial review pursuant to section 24-4-106, C.R.S.

5. All Other Adjudicatory Hearings

See §§ 24-4-105 and 33-1-111, CRS for additional detail and requirements

- a. Unless the Commission directs otherwise, all other adjudicatory matters within the jurisdiction of the Commission will be heard initially and decided by an administrative law judge within the Division of Administrative Hearings.
- b. Any person requesting an adjudicatory hearing on a matter within the jurisdiction of the Commission shall file a written request for a hearing with the Commission.

- c. The request for an adjudicatory hearing shall include:
 - 1) the person's name, address and telephone number;
 - 2) a narrative statement of the person's position, including a complete statement of the factual basis and legal justification for any relief requested;
 - 3) copies of any written documentation or documentary evidence supporting the person's position;
- d. Except as may otherwise be directed by the Commission, requests for adjudicatory hearings will be reviewed at the next regular meeting of the Commission following their receipt, provided the request is received by the Commission at least thirty days prior to the meeting.
- e. The person will be notified of the assignment of the matter to the Division of Administrative Hearings or whether the Commission will hear the matter itself.
- f. All further proceedings will be conducted in accordance with §§ 24-4-105, CRS

ARTICLE II - IMPLEMENTATION OF HB1158

#1602 - PURPOSE AND SCOPE

These rules govern administrative proceedings pursuant to the Commission's obligations under House Bill 1158 as described by Section 37-60-122.2 CRS and Section 5 of Chapter 266, Session Laws of Colorado 1987. This Act, dated July 13, 1987, directs the Wildlife Commission (Commission) and the Water Conservation Board (Board) or the Governor to determine an official State position on a wildlife mitigation plan submitted by an applicant proposing to construct, operate or maintain a water project requiring federal approval. It also establishes State grants to assist in paying for wildlife mitigation and/or enhancement measures. These rules are written to be compatible with the Board's "Rules and Regulations for the Implementation of Colorado's Fish and Wildlife Mitigation and Enhancement Grant Program."

These rules apply to all actions required by and taken pursuant to Section 37-60-122.2 CRS, (1984 and 1987 Supp.) and Section 5 of Chapter 266, Session Laws of Colorado 1987.

These rules apply to all applicants who file an application for, or receive a permit for, a proposed water project on or after July 13, 1987.

These rules do not apply to the Animas-La Plata Project, the Two Forks Dam and Reservoir Project, the Homestake Water Project or to any project which is eligible for a nationwide permit pursuant to Section 404 of the Federal Clean Water Act or to any project, except reservoirs, which requires an individual permit pursuant to Section 404 of the Federal Clean Water Act unless the applicant elects to submit a wildlife mitigation or enhancement plan.

These rules do not apply to actions concerning or carrying out other statutory responsibility of the Commission.

#1603 – DEFINITIONS

- A. Applicant** means any person or entity proposing to construct a water diversion, delivery or storage facility in the state of Colorado requiring an application for a permit, license, or other approval from the United States.
- B. Approval** means any form of approval which is required from the United States prior to the construction of a project.
- C. Board** means the Colorado Water Conservation Board.

- D. Commission** means the Colorado Parks and Wildlife Commission.
- E. Construction Costs** means the best estimate of the physical construction costs of the project as fixed by the Board as of the date of the grant application. Costs are limited to design, engineering and physical construction and will not include the costs of planning, financing, and environmental documentation, mitigation costs, legal expenses, site acquisition or water rights.
- F. Construction Fund** means the Board's construction fund as established by Section 37-60-121, CRS.
- G. Division** means the Colorado Division of Parks and Wildlife and, when necessary, it may be construed as referring to the Commission.
- H. Enhancement** means the improvement of the total value of fish and wildlife resources affected by the project beyond that required by mitigation and beyond that which would occur without the project.
- I. Enhancement Grant** means a sum of money or other remuneration awarded to the applicant by the Board, to pay for the State's contribution to the implementation of an enhancement plan.
- J. Enhancement Plan** means a document describing the measures to be completed by the applicant which will enhance fish and wildlife resources beyond that which would occur without the project. It includes a cost estimate for the implementation of the plan and a schedule for completion.
- K. Fish and Wildlife Resources Account** means the account established in the Board's Construction Fund to provide funding for mitigation and enhancement grants.
- L. License** means any license which is required from the United States prior to the construction of a project.
- M. Mitigation** means any action or measures taken to address undesirable project impacts on fish and wildlife resources which may be accomplished in several ways, including reducing, minimizing, rectifying, compensating, or avoiding impacts.
- N. Mitigation Grant** means a sum of money or other remuneration awarded to the applicant by the Board to pay for the State's contribution to the implementation of a mitigation plan.
- O. Mitigation Plan** means a document describing the measures to be completed by the applicant which will mitigate losses to fish and wildlife resources resulting from the project. It includes a cost estimate for the implementation of the plan and a time schedule for completion.
- P. Notice** means the date the Division receives documents required of an applicant for a mitigation plan.
- Q. Permit** means any permit, other than a nationwide 404 permit, which is required from the United States prior to the construction of a project.
- R. Project** means a water diversion, delivery, or storage facility or facilities, and any combination thereof, together with all associated and appurtenant project works.
- S. Water diversion, delivery or storage facility** means any structure or structures built for the purpose of diverting or transporting water from a stream, lake or reservoir, on or off channel, to any type of a

supply system, or any structure built for the purpose of storing water for subsequent application to beneficial use.

#1604 - PROCEDURES FOR ARRIVING AT AN OFFICIAL STATE POSITION ON MITIGATION

A. Requirement of Applicants

1. An applicant proposing to construct a water project requiring an application for a federal permit, license, or other approval as described in #1602 shall advise the Division and the Board, in writing, within five working days of submission of an application for federal permit, license or other approval, and provide each agency with a copy of the application and all materials cited in, referenced in, or submitted with the application.
2. When the applicant has prepared a wildlife mitigation plan which is ready for Commission evaluation, the applicant shall give notice to the Commission by submitting 15 copies of the plan to the Division, five of which are to be submitted to the appropriate Division Regional office and ten to the Denver headquarters office; and 15 copies to the Board. The following information shall be prepared within the time sequence and framework of established federal environmental impact review requirements. The mitigation plan shall include:
 - a. A description of the project.
 - b. An estimate of construction costs.
 - c. An assessment of the fish and wildlife resources impacted by the project, measures to mitigate the losses to fish and wildlife resources, a time schedule, and the costs and benefits of the plan.
 - 1) A wildlife impact assessment identifies, predicts the direction and magnitude of, and evaluates and communicates the significance of a project as it affects wildlife. The assessment is dependent upon baseline data that provides an overview of the wildlife resources and related conditions as they currently exist in the area. It also provides a basis for analyzing and determining the extent and scope of project impacts, or its alternatives, to wildlife. The assessment is an integral part of the environmental impact assessment process and is not intended to be separate from or beyond the scope of that process.
 - 2) Decisions regarding such things as study design, period of study, and responsibility for data collection and costs should be approached on a case by case basis and agreed to through interagency review at the initiation of the environmental assessment process.
 - 3) The wildlife impact assessment and recommendations for mitigating losses will be based upon a systematic evaluation of fish and wildlife resources and habitats using the best available scientific information and professional judgment. The plan will contain an estimated cost and assignment of development, operation and maintenance of the mitigation measures and a monitoring plan.
 - 4) Where possible, impacts to wildlife and habitat will be separated into the following categories: direct and indirect; on-site and off-site; public lands and private lands; and cumulative impacts. In the disclosure of predicted impacts, each category may have

separate mitigation measures associated with it, which when assembled make up a mitigation plan.

- 5) Normally, mitigation should occur concurrently with or prior to project development, be proportional to impacts, and last for the entire period in which impacts to wildlife resources persist as federal, state and local laws and regulations provide.

B. Commission Action

1. Upon receipt of all the information required in #1604.A.2. the Division will respond, within ten working days, to the applicant with a written acknowledgment that the necessary documents have been received. The date of receipt by the Division is the official date of notice to the Division and the 60 calendar day review period will be initiated culminating in a Commission recommendation for a State position.
2. Within 60 calendar days after an applicant gives notice by submitting a mitigation plan to the Division, unless extended in writing by the applicant, the Commission will make its evaluation of the project's impact on fish and wildlife resources and submit its recommendation to the Board.
3. The Commission will make its evaluation regarding the probable impact of the proposed project on fish and wildlife resources and their habitat based on the information submitted pursuant to #1604.A.2. The Commission may consider the following criteria in making their recommendation that the mitigation plan is economically reasonable and reflects a balance between protecting the fish and wildlife resources and the need to develop the state's water resources:
 - a. The value and significance of the affected wildlife resource.
 - b. The potential impacts of the project and its alternatives to wildlife.
 - c. The availability of best existing technology to implement and monitor the success of the mitigation plan.
 - d. The degree to which the identified impacts are mitigated and the permanence of desired effects of the mitigation measures.
 - e. The cost of the planned mitigation in comparison to the benefits to the affected wildlife resource.
 - f. The net benefits of the project and its mitigation plan to the state's wildlife resources.
 - g. The consistency of wildlife mitigation with other environmental and conservation goals.
 - h. The legal ramifications of state water law on implementing the proposed mitigation measures.
4. If the Commission and the applicant agree upon a mitigation plan, the Commission shall recommend that the Board adopt the plan at its next meeting as the official state position on the mitigation action required of the applicant.
5. When the Commission and the applicant do not agree upon a mitigation plan, the Commission shall transmit to the Board 15 copies of its report which shall include (1) its evaluation of the project's impact on fish and wildlife, (2) its mitigation recommendations, including an estimate of

the costs and benefits of its plan, and (3) its analysis of the applicant's mitigation plan. Documentation will include the significance of the fish and wildlife resources impacted by the project and a comparison of the impacts to the fish and wildlife resources resulting from both plans.

#1605 - Procedures for Granting an Enhancement Grant

A. Requirements of Applicants

Any applicant who can demonstrate that the project will enhance fish and wildlife resource values over and above existing levels may apply, within two years after the adoption of the official State position on mitigation, for an enhancement grant by submitting ten (10) copies of an enhancement plan to the Division's Denver office and five (5) copies to the appropriate regional office.

The enhancement plan will include:

1. A time schedule for construction of the project and implementation of the mitigation measures.
2. Any significant changes in the project and/or the mitigation plan.
3. A time schedule for the implementation of the enhancement measures.
4. A cost estimate of implementing the enhancement plan.
5. An analysis of the plan's benefits to fish and wildlife.
6. Desired results of the enhancement plan.
7. Impact of the enhancement measures on the surrounding environment.
8. A cost estimate and assignment for the operation and maintenance of the enhancement measures.
9. A plan to monitor the effectiveness of the enhancement measures.

B. Commission Action

1. The Commission will review the applicant's enhancement plan according to the requirements defined in #1605.A. If the Commission approves the applicant's plan it will submit a report to the Board approving the enhancement plan, evaluating the plan's contribution to the state's fish and wildlife resources, approving the cost estimate, and committing the Commission to contribute one-half of the costs. Commission concurrence of the enhancement plan is required before the Board can consider an enhancement grant.
2. If the Board agrees to fund the enhancement plan, the Commission will enter into a contract among the Commission, the applicant, and the Board, prior to the disbursement of the enhancement grant.

ARTICLE III – CITIZEN PETITIONS

#1606 - Citizen Petition Requirements

Any person may petition the Commission to initiate rulemaking pursuant to 24-4-103(7), C.R.S. All petitions for rulemaking must contain the following information: (1) The name, address, and telephone number of the person requesting the rulemaking; and (2) A copy of the rule proposed in the petition, preferably in redline format, and a general statement of the reasons for the requested rule or revision.

#1607 - Reserved

#1608 - Reserved

ARTICLE IV – REFUNDS, REIMBURSEMENT AND RESTORATION OF PREFERENCE POINTS

#1670 Refunds and Restoration of Preference Points

See also §§ 33-4-102 (6) for statutory provisions related to refunds

- A. General Refund Procedures** – Except as provided herein, anyone may request and be given a refund for a license no later than fourteen (14) days prior to the opening day of the applicable turkey season for turkey licenses or thirty (30) days prior to the opening day of the season for which the license was issued for all other licenses, minus a \$15.00 processing fee. The \$15.00 processing fee will not be charged for refunds requested on youth licenses, in the case of Division error, or if any of the following circumstances prevent the license holder from exercising the intended benefits of the license: extreme medical circumstances involving the license holder or a license holder's immediate family member, death of the license holder, death of the license holder's immediate family member, military orders, or jury duty. Requests must have a valid U.S. postmark, or be submitted at a Division office at least fourteen (14) days prior to the opening day of the applicable turkey season or thirty (30) days prior to the opening day of any other season for which the license was issued. Youth are exempt from the (14) days prior requirement for turkey licenses and the (30) days prior requirement for big game licenses and may submit a request up to the day before the start of the season.
1. All refunds shall be requested on a form provided by or in the format requested by the Division.
 2. All requests for license refunds must be accompanied by the entire license and carcass tag when applicable.
 3. Refunds may be requested by mail or in person at any Division office.
 4. Refunds shall only be issued to the person whose credit card was used or name appears on the license.
 5. Licenses purchased through non-Division license agents will be refunded at cost less license agent fee.
 6. No refunds shall be made in any circumstance where the license holder was hunting in the field during an active season for the license and designated species as specified in Commission rules and regulations.
 7. No refunds shall be made on any special licenses listed in 33-4-102(2), C.R.S., or any auction or raffle licenses as provided for in 33-4-116 or 33-4-116.5, C.R.S., or on any exchanged license, or on any license that costs less than \$15.00 with the exceptions of resident youth turkey and

resident youth big game licenses, or to any person whose license privileges have been suspended by the Commission.

8. When the \$15.00 processing fee exceeds the original refund amount, no refund shall be issued and the remainder of the processing fee shall be waived.
9. All limited licenses returned to the Division for a refund or preference point restoration will be available for reissue after the request has been processed using the current leftover list and following all other license purchase regulations, except for the following limited licenses:
 - a. Turkey, deer, elk, pronghorn and bear hunt codes which required five (5) or more resident preference points to draw as determined by the current year's limited license draw;
 - b. Bighorn sheep, mountain goat, and moose licenses;
 - c. All public Ranching for Wildlife licenses.
10. The following limited licenses returned for refund or preference point restoration will be reissued by the Division manually:
 - a. Turkey, deer, elk, pronghorn and bear hunt codes which required five (5) or more resident preference points to draw as determined by the current year's limited license draw;
 - b. Bighorn sheep, mountain goat, and moose licenses;
 - c. All public Ranching for Wildlife licenses.

If the next in line regular draw list applicant accepts one of the aforementioned first choice licenses that has been returned and reissued, all accumulated preference points for that species become void. If a license cannot be manually reissued to one of the first five people on the regular draw list, the license will become available for reissue using the current leftover license list. Public Ranching for Wildlife licenses will not be reissued within fourteen (14) days of the start date for the respective hunt code or be available for sale off the leftover license list.

11. Requests for refunds after the opening of the season will be accompanied by a signed affidavit that the license has not been used and circumstances precluded the licensee from being able to use the license. In addition, to be eligible for a refund the failure to apply for a refund less than thirty (30) days prior to the opening day of the season for which the license was issued cannot be due to a lack of diligence on the part of the licensee. The Division's License Administration Manager will render a decision on the refund request on behalf of the Division and the Commission and such decision shall constitute final agency action. Circumstances for which reimbursement will be considered shall be limited to:
 - a. Extreme medical circumstances involving the license holder or a license holder's immediate family member;
 - b. Death of the license holder or death of a license holder's immediate family member;
 - c. Active and reserve members of the United States armed forces whose military orders overlap with the season dates of the returned license; or

- d. Individuals on jury duty whose jury duty service overlaps with the season dates of the returned license.

B. Other Refunds

1. Refunds or antlerless licenses may be issued in any unit approved by the Division for the same species in the same year to hunters who harvest a deer, elk or moose in which Chronic Wasting Disease (CWD) is detected through the Division's CWD monitoring or testing programs. Where there is no open season or insufficient time remains to reasonably exercise the benefits of a license granted in the same year, the Division may issue the licensee an antlerless license for the same species in the following year in the same Game Management Unit where the CWD detected animal was harvested, or if antlerless hunting is not permitted in the applicable GMU, the Division may designate a substitute GMU. If the season closes prior to October 31 in the unit, the license will be valid through October 31. The provisions of this regulation shall apply to any hunter who harvests a moose after January 1, 2006 in which CWD is detected. Licenses issued pursuant to this provision shall not be considered part of the quota otherwise established by the Commission for that GMU.
2. Except for cases of Division error, no refunds shall be issued for any annual license, one-day, or five-day license, mountain lion license or preference point fee.

C. Restoration of Preference Points

1. License preference points used to obtain the license will not be restored except as follows:
 - a. No later than fourteen (14) days prior to the opening day of the applicable turkey season for turkey licenses or thirty (30) days prior to the opening day of the season for all other licenses, preference points may be restored to the pre-drawing level in lieu of a refund at the licensee's request.
 - b. Less than fourteen (14) days prior to the opening day of the applicable turkey season for turkey licenses or thirty (30) days prior to the opening of the season for all other licenses, the License Administration Manager may restore license preference points to the pre-drawing level and/or issue a monetary refund if any of the following circumstances prevent the license holder from exercising the intended benefits of the license:
 1. Extreme medical circumstances involving the license holder or a license holder's immediate family member;
 2. Death of a license holder's immediate family member;
 3. Active and reserve members of the United States armed forces whose military orders overlap with the season dates of the returned license; or
 4. Individuals on jury duty whose jury duty service overlaps with the season dates of the returned license.

- D. Requests for refunds and/or restoration of license preference points due to extreme medical circumstances involving the license holder or a license holder's immediate family member, the death of a license holder's immediate family member, military orders that prevents the service member from

exercising the intended benefits of the license or jury duty will be accompanied by sufficient evidence demonstrating that the license has not been used and circumstances precluded the licensee from being able to use the license. In addition, sufficient documentation is required to prove extreme medical circumstances, death, military orders or jury duty service.

E. Time Restriction

1. A refund or preference point restoration will be denied when the request is submitted more than thirty (30) days after the opening of the season for which the license was issued. Provided further that all time limits will be extended for active and reserve members of the United States armed forces whose military service requirements precluded their application for a refund or preference point restoration within said periods.
2. When additional documentation is requested and required by the Division to approve a refund and/or restoration of preference points request, the requestor will have thirty (30) days from the mailing date indicated on the notification letter to submit all the required documentation. If required documentation is not submitted prior to the 30-day deadline, the request will be considered closed and denied. No requests from the previous year will be considered after January 31, annually.

F. Director Disaster Relief Authority

1. When, in the determination of the Director, existing Parks and Wildlife regulations will have a significant negative impact following a natural disaster that displaces persons from their homes, or closes areas to public access and results in a time-critical demand for use of park resources or a complete (or near complete) loss of hunting opportunity, the Director is authorized to take emergency administrative actions, including, but not limited to:
 - a. Issuance of license fee refunds.
 - b. Restoration of preference points.
 - c. Exchange of big game hunting licenses for leftover or over-the-counter licenses.
 - d. Issue similar guaranteed licenses for another license year.
 - e. Suspension of length of stay camping limits on Division-owned or controlled properties.
 - f. Imposition of administrative requirements associated with the application for relief granted under this section.

#1671 – Sponsorships and Waivers

- A.** Area Wildlife Managers may provide state wildlife area access or entry licenses or permits issued pursuant to 33-4-102(3), C.R.S up to \$500 in value per fiscal year, per Area, to be used as sponsorships as a part of a fundraiser, promotion or marketing effort for local community supporting partners.
- B.** Any state wildlife area access or entry license or permit fee issued pursuant to 33-4-102(3), C.R.S. may be waived for Division sponsored education, outreach, volunteer or safety activities (events); for supporting partner activities (events) and research activities that directly support the Division; for official

business by other governmental agencies conducted on state wildlife areas or for Division administrative purposes.

#1672 - Reimbursement for processing costs associated with CWD positive animals

A. Costs incurred for processing CWD positive animals

1. Hunters may request reimbursement from the Division for the reasonable costs actually incurred when processing any animal that:
 - a. receives a positive test result from a USDA approved contract laboratory using a USDA approved test;
 - b. is untestable as a result of any act or omission of the Division; or
 - c. is untestable for any reason and was required to be submitted for testing by regulation.
2. All requests for reimbursement shall be submitted on the forms provided by the Division and accompanied by receipts supporting the amount of reimbursement requested, except that reimbursement for processing shall be allowed without receipts in the amount of \$50. Reimbursement with receipts is limited to no more than \$100 per animal for private processing supplies or \$200 per animal for commercial processing except for moose. The maximum reimbursement for commercial processing for moose is \$250.00.

#1673 – Alcohol

- A. Upon recommendation of the park manager or area wildlife manager, the region manager may establish and enforce a temporary closure or restriction on any lands and waters under the supervision, administration, or jurisdiction of the Division to alcohol consumption when the region manager concludes that the closure or restriction is necessary to assure the health, safety and welfare of the public, users or staff, or protection of resources. The park manager or area wildlife manager and the region manager shall consider factors, including but not limited to, the effect or potential effect of alcohol consumption on employee and user safety, property appearance, atmosphere, noise levels, conflicts with other uses or users, the demand for law enforcement, the potential impacts to park or wildlife resources and the demand on Division staff.
- B. Whenever such temporary closure or restriction is instituted, the area(s) involved shall be posted indicating the nature and purpose of the closure.

ARTICLE V - Reasonable Accommodations for Persons with Disabilities

#1680 – Reasonable Accommodations

- A. The Director shall have the authority to grant variances from the regulations adopted by the Parks and Wildlife Commission, including but not limited to manner of take and access accommodations, for the sole purpose of providing reasonable accommodations to persons with disabilities.
- B. Application for such accommodations must be made on a form available from and submitted to the Division at least 30 days prior to the requested effective date.

- C. Such applications will be reviewed on a case-by-case basis and supporting documentation may be required. If an accommodation is authorized, the applicant will be provided with a special permit listing the accommodation and any conditions of its use.
 - 1. When shooting from a motor vehicle is authorized, the permittee is authorized to discharge a firearm or release an arrow from a stationary motor vehicle only after all forward motion has ceased and the motor has been turned off or is incapable of forward motion. No shooting may be done from a public road.
- D. Permits are free of charge, and valid for the time period designated on the permit. Permits shall be presented for inspection upon request by an officer of the Division.
- E. Hunters with permits must be accompanied by another person when necessary to ensure that the wildlife taken is retrieved and properly prepared for human consumption. Such person may dispatch wounded wildlife when so authorized as a condition of the permit.
- F. Persons provided with any accommodation under this regulation shall comply with all other applicable laws and regulations. Permits allow variances only from regulations specifically addressed and only in the manner and under the circumstances set forth therein.
- G. A service animal is defined as any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the handler's disability. The crime deterrent effects of an animal's presence and the provisions of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.

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.
- 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).

05/03/2023

Basis and Purpose
Chapter W-16 - Procedural Rules

Basis and Purpose:

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 THIS 3RD DAY OF MAY, 2023.

APPROVED:
Carrie Besnette Hauser
Chair

ATTEST:
Marie Haskett
Secretary