

CITIZEN PETITION FORM

Date: March 4, 2021

Issue: Preference Point Restoration

Which rule are you seeking to create or revise? Please include a copy of the rule you are proposing to create or change, preferably with the change made in redline format.

CRS 33-1-102(27)

All limited licenses returned to the Division for a refund or preference point **increased by one** will be available for reissue after the request has been processed.

Why are you seeking to create or revise this rule? Please include a general statement of the reasons for the requested rule or revision and any relevant information related to the request.

Not being able to elk hunt because of not gaining permission from a local jurisdiction drawing renders the CPW Elk license useless, just as if no license was granted. It seems reasonable that a preference point be granted because of a useless CPW Elk license, which is the same as not being granted a license at all.

The Big Game brochure for Hunt Code EF-020-L3-R strongly recommends landowner permission before applying.

For the 2020 season, there were no Boulder County Open Space landowner permissions for any hunter before the CPW application deadline.

The 2020 Elk Hunting Statistics have no statistics for EF-20-L3-R. It is not possible to know how many hunters applied for Ron Stewart Preserve at Rabbit Mountain or Red Hill. The number of hunters that successfully drew tags for each Boulder Open Space area are not available and the success percentages are not available.

Petitioner's name:

Frank de Vall



COLORADO

Parks and Wildlife

Department of Natural Resources

Director's Office
6060 Broadway
Denver, CO 80216
P 303.297.1192

TO: Mr. Frank de Vall

RE: March 4, 2021 petition related to Colorado Parks and Wildlife regulation Ch. W-16, #1670, Refunds and Restoration of Preference Points

Dear Mr. de Vall:

Colorado Parks and Wildlife (CPW) is in receipt of your March 4, 2021 petition requesting the Parks and Wildlife Commission amend Ch. W-16, #1670, relating to license refunds and restoration of preference points. Your petition seeks the following regulatory change:

All limited licenses returned to the Division for a refund or preference point increased by one ~~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: ...

The Commission will consider your petition at its meeting on May 5, 2021. For the reasons explained below, the Division of Parks and Wildlife (Division) opposes your petition and recommends the Commission deny it.

The Commission's regulation concerning citizen petitions is Ch. W-16, #1606. The Commission 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, "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." Denial of a petition constitutes final action by the Commission. *Id.*, p. 3. The Division recommends the Commission deny your petition. If adopted, this recommendation will become the order of the Commission denying your petition and will be effective upon mailing.

The statutory basis for CPW's refund regulations is §33-4-102(6)(a), CRS, which provides:

Moneys received in payment for any licenses issued under this title shall not be refunded except for proven error committed by the division in issuing licenses or upon the death of a licensee in possession of a big game license if death occurs before the starting date of the season specified on said license or if authorized by the director under rules of the commission.

The Division believes that, consistent with § 33-4-102(6)(a), CRS, refunds should be available in limited circumstances and, where available, should restore the customer to the same position they were in prior to entering the draw, while fairly compensating CPW for its costs in processing the customer's draw application and subsequent request for refund. The



Division opposes your petition because the existing regulation strikes the appropriate balance among numerous policy considerations.

If adopted, your proposed regulation would make it possible for customers seeking a refund to be in a *better* position than they were prior to entering the draw by requiring CPW to credit the customer with an additional preference point. The Division sees no reason to do so if the goal of any refund, at least where the customer seeks a limited license as their first-choice hunt code, is to equitably restore the customer to the status quo prior to entering the draw. Moreover, your proposal would exacerbate preference point creep. Crediting customers with an additional preference point in the refund context would artificially inflate the number of preference points available to some hunters to the detriment of others.

Ch. W-16, #1670.C.1.a states that, no later than 30 days prior to the opening of the season for all non-turkey licenses, preference points used to obtain the license “may be restored to the pre-drawing level in lieu of a refund at the licensee’s request.” The Division believes this rule is fair, even under the specific circumstances described in your petition.

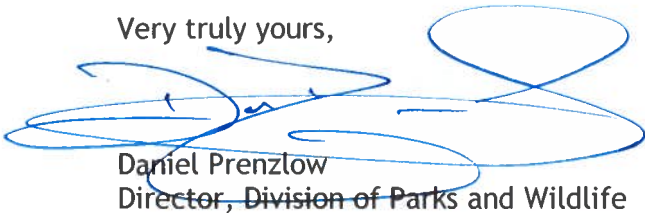
The example cited in your petition of the elk hunt on Ron Stewart Preserve at Rabbit Mountain Open Space, which also requires an access permit from Boulder County, is only a part of the Game Management Unit 20 subunit. As such, there are other private land opportunities to hunt using the license you received that do not require access to the preserve. As stated on the Boulder County website, “the E-F-020-L3-R license is only valid in a small area of unit 20. Hunters should obtain other landowner’s permission in case they are not selected in our random drawing or the license can be returned to Colorado Parks and Wildlife.” <https://www.bouldercounty.org/open-space/management/rabbit-mountain-elk-management-plan/>.

Additionally, while it is a limited license, the specific hunt code cited (E-F-020-L3-R) did not require preference points to draw a license in 2020. A hunter could have applied for a preference point as their first choice in the draw and successfully drawn the license as a second or third choice. Rewarding a hunter who returns such a license with an additional preference point would be inequitable.

For the foregoing reasons, the Division opposes your petition and recommends the Commission deny it.

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

Very truly yours,



Daniel Prenzlów
Director, Division of Parks and Wildlife