



April 15, 2023

Public Comments Processing
Attn: FWS–R6–ES–2022–0100;
U.S. Fish and Wildlife Service,
MS: PRB/3W, 5275 Leesburg Pike
Falls Church, VA 22041–3803

RE: Establishment of a Nonessential Experimental Population of the Gray Wolf in the State of Colorado; Environmental Impact Statement
Docket No. Docket No. FWS–R6–ES–2022–0100

Dear Sirs:

Please accept this correspondence as the vigorous support of the above Organizations for Alternative 1 in the Draft EIS and Rule (“The Proposal”). We are making these comments to supplement our previous input submitted during scoping on several topics such as clarity in the Rule making. The Organizations vigorously assert that management authority should focus on avoiding unacceptable impacts to various interests from the wolf being present. The benefit to the species in this effort is well established and without question occurring, now the efforts should be focusing the benefits and avoiding impacts. The Organizations would like managers to be able to look back at 10j efforts and Proposition 114 more generally in ten years and be able to discuss the effective mitigation of impacts in the reintroduction rather than being forced to summarize another controversial wildlife reintroduction in the Western United States. More specifically our concerns include:

1. The Organizations would like to voice our vigorous support for the proposed “optional management authority” to address wolf populations that are creating an unacceptable impact to ungulate populations on the local level;

2. The Organizations would also like to voice our vigorous support for the expansion of the “optional management authority” to manage wolf populations to all species including species of special concern, domestic pets and other species that could be impacted; and

3. Expand the unacceptable impact threshold for triggering of optional management authority as a resource for managers to address other issues as well.

The Organizations would like to thank the Service for moving the public concerns raised around possible impacts from wolf predation on ungulates forward as a concern that would be addressed with the optional management authority. While we are aware that this optional management authority is only proposed to be applied to ungulates in the Proposal, we believe expansion of this type of management authority will be a significant benefit in the case where wolves are impacting other wild species such as Lynx, domestic herd animals and domestic pets. We are aware that these types of concern have not been documented well, we are also aware that this issue has not been well researched either. We believe that this authority is critical to mitigating unintended impacts, should they be found. The Organizations are aware that this optional management authority still requires a public engagement analysis process and decisions for utilization of this optional management authority and we believe this review process will provide significant protections for all species possibly impacted.

While Prop 114 has been cutting edge in many ways, such as reintroducing a species based on a ballot initiative, we are rapidly becoming concerned that Prop 114 has ushered in a new level of conflict around species management. We are also concerned that this conflict will be systemic in nature and spanning a long period of time. This is exemplified by the fact that Prop 114 has triggered more state level legislation addressing a wide range of issues around the reintroduction, than all other species reintroductions in state history combined. Already this legislative session has seen the introduction of two more pieces of legislation that are addressing significant problems and impacts from Prop 114. The Organizations are seeking the broadest and

encompassing protections for all recreational access in the 10j designations. We are seeking this protection in clear and unequivocal language. After participating in ESA efforts for decades there is always an assertion that motorized recreation is negatively impacting the species making this type of guidance very valuable to our concerns. This conflict continues despite numerous species specific studies being developed and the decline of some species occurring even before motorized recreation was a concept and often impacts to activities like ours are summed up as unintended impacts of the listing. The Organizations submit a wide-ranging protection for recreation would be a significant step towards avoiding unintended consequences of the species protection and reintroduction and reflect a decision that is highly solidified in best available science. For wolves this means stating that recreational access and wolves are unrelated.

The Service has provided similar broad protections around wolverines in Colorado and we would ask for language at least as strong as that previously provided in possible 10j designations for the Wolverines. Weaker recreation protections have been provided for the Mexican Gray wolf in Arizona and New Mexico 10j efforts and it has been our experience that these protections have not proven to be strong enough, as even with these protections every time there is a planning effort, trails have to be reviewed for the protection of Mexican wolves. We would ask the Service to apply the “unacceptable impacts” standard proposed for ungulates far more broadly than to just ungulate populations as unacceptable impacts will range far outside just this issue.

1. The Organizations continue to request clarity on the lack of impact from recreation on wolves.

We are aware that recreation can be a wide-ranging usage of public lands. We welcome and support the recognition of the minimal threat of high-speed roads to wolf populations in the analysis as these resources are used by almost all types of recreational interests. While the high-speed road is often not the recreational experience, it is critical in obtaining the recreational experiences sought. The Proposed rule outlines the minimal nature of the threat as follows:

“Risks include wolves killed as a result of mistaken identity, accidental capture during animal damage control activities, and high-speed vehicular traffic. Human-caused mortality includes both controllable and uncontrollable sources of mortality. Controllable sources of mortality are discretionary, can be limited by the managing agency, and include permitted take, sport hunting, and direct agency control. Sources of mortality that will be difficult to limit, or may be uncontrollable, occur regardless of population size and include things such as natural mortalities, illegal take, and accidental deaths (e.g., vehicle collisions, capture-related mortalities) (85 FR 69778, November 3, 2020). The biggest risks likely include illegal take of wolves and individuals hit by motor vehicles. Accidental mortality caused by vehicle collisions are uncontrollable, but are not anticipated to be a significant cause of mortality.”¹

The Organizations welcome the hierarchy of management manner of recognition and prioritization of the threats to the species that is used in the Rule. It has been our experience that this type of hierarchy of management concerns for a species is more effective in reducing unintended consequences of any management actions when compared to a single level management effort. A wide range of tools for managers is always a good thing and we would be vigorously opposed to any reduction in this management clarity.

The Organizations would ask for a clear and unambiguous recognition in the 10j designation of the **lack** of relationship between recreational activities and wolf habitat and populations as has been previously provided for the Wolverine and has been provided for high-speed arterial roads. This lack of a relationship could not be more evident as wolves were hunted to extinction in Colorado decades before anyone thought about developing an off-road motorcycle or ATV. The USFWS and adjacent State Wolf management efforts have already identified that social impacts, such as recreation, from the wolf management efforts remain a major challenge in species management despite the fact these two issues are entirely unrelated.

¹ See, Proposal at pg. 40.

Our concerns around impacts from previous species introductions have been able to be resolved in rulemaking through designations such as experimental non-essential classifications for wolverines and clear statements of the fact there should be no change in forest management from a wolverine being in the areas.² The clarity provided around the lack of relationship between wolverine and recreation was addressed in the 2014 listing update for the Wolverine as follows:

“We find no evidence that winter recreation occurs on such a scale and has effects that cause the DPS to meet the definition of a threatened or endangered species. We continue to conclude that winter recreation, though it likely affects wolverines to some extent, is not a threat to the DPS”³

We are aware that the 2014 Wolverine update was eventually struck down in Court for reasons unrelated to recreation or the 10j Rule Protections, however the Organizations have found significant value in the 10j protections in numerous efforts and discussions on the Wolverine. With CPW possibly looking at reintroducing Wolverine as well, we are thankful to be starting from this clear position on management rather than having to restart discussions from scratch again.

While there is only minimal data or research available with wolverine, the USFWS has more than 3 decades of data on wolves that have been reintroduced throughout the Western United States. Additionally, there is a huge volume of state-based information and planning resources available from the management of wolves in western states for more than the last decade. As a result of the decades of high-quality wolf research and data that is now available there is a well-documented consensus that there is no relationship between dispersed recreation and wolf survival that must be clearly and unequivocally stated. We were able to obtain this level of clarity with the 2014 Wolverine Proposal and can see no reason why even greater clarity would not be

² A copy of this document is available here: [2014-18743.pdf \(fws.gov\)](https://www.fws.gov/2014-18743.pdf)

³ 47532 Federal Register / Vol. 79, No. 156 / Wednesday, August 13, 2014 / Proposed Rules

obtainable for gray wolves in Colorado as well, given that 10j protections in place for the Mexican Gray wolf have proven insufficient to mitigate ongoing management issues.

The Organizations would like to highlight the lack of concern between recreational usage of roads and trails and wolf populations or habitat quality. In the USFWS 2016 review of the wolf population specific conclusions on this relationship, the Service stated as follows:

“To summarize, none of the status review criteria have been met and the NRM wolf population continues to far exceed recovery goals (as demonstrated by pack distribution and the number of wolves, packs, and breeding pairs in 2015). Documented dispersal of radio collared wolves and effective dispersal of wolves between recovery areas determined through genetic research further substantiate that the metapopulation structure of the NRM DPS has been maintained solely by natural dispersal. No threats to the NRM wolf population were identified in 2015. Potential threats include: A. The present or threatened destruction, modification, or curtailment of its habitat or range; B. Overutilization for commercial, recreational, scientific, or educational purposes; C. Disease or predation; D. Inadequacy of existing regulatory mechanisms; and E. Other natural or man-made factors affecting its continued existence (including public attitudes, genetic considerations, climate changes, catastrophic events, and impacts to wolf social structure) that could threaten the wolf population in the NRM DPS in the foreseeable future.

Delisting the NRM DPS wolf population has enabled the States, Tribes, National Park Service and Service to implement more efficient, sustainable, and cost-effective wildlife programs that will allow them to maintain a fully recovered wolf population while attempting to minimize conflicts.”⁴

⁴ See, USFWS 2016 update at pg. 5.

The Organizations believe it is significant that the USFWS clearly identifies that reducing management conflicts are a major concern for the wolf, unlike the 3 criteria that the USFWS normally reviews for possibly listed ESA species. The Organizations would be remiss if the high level of overlap between major conflicts identified in the 2016 USFWS update and the unacceptable impacts currently proposed was not noted. The overlap is significant and the optional management authority would be a major step in reducing a known problem that has plagued wolf management for decades. The US Fish and Wildlife Service also clearly states the major concern in wolf habitat with roads is wolves being struck and killed on roadways as follows:

“In this final rule, we refer to road densities reported in the scientific literature because they have been found to be correlated with wolf mortality in some areas. We are not aware of any scientific basis for the concern that lower road densities would substantially reduce prey availability for wolves to the extent that it would impact population viability.”⁵

The Organizations would note there is a significant difference between a wolf being impacted on a high-speed arterial road and the risk of a wolf being impacted on a low-speed dirt road or trail. If there was any concern on the latter impacting habitat quality or wolf populations it is of such little concern it is not discussed. The Organizations are aware that highways may be looked at for management but we would be opposed to any restriction of existing recreational opportunities for dispersed or lower speed recreational opportunities. Rather this type of recreation commonly is drawn into management inadvertently and this should be avoided.

The Wyoming State wolf plan goes into great detail regarding the lack of relationship between low-speed trails and roads and wolf habitat quality stating as follows:

“Wolves are not known to demonstrate behavioral aversion to roads. In fact, they readily travel on roads, frequently leaving visible tracks and scat (Singleton 1995).

⁵ See, DOI; US Fish and Wildlife Service; *Endangered and threatened wildlife and plants; removing the gray wolf from the list of Endangered and Threatened Wildlife*; Federal Register Vol 85 No 213 at pg. 69870.

In Minnesota and Wisconsin, wolves have been known to occupy den and rendezvous sites located near logging operations, road construction work, and military maneuvers with no adverse effects [Minnesota Department of Natural Resources (DNR) 2001]. The only concern about road densities stems from the potential for increased accidental human-caused mortalities and illegal killings (Mech et al. 1988, Mech 1989, Boyd-Heger 1997, Pletscher et al. 1997). Although some of the areas within the GYA are administered by the U.S. Forest Service for multiple use purposes and have high road densities, much of the GYA is national parks or wilderness areas that have limited road access and minimal human activity.”⁶

Wyoming State reports provide a highly detailed outline of factors that are impacting wolf populations. There are no factors that are related to recreational activity and we again note trail-based recreation occurs at such a low speed as to make wolf fatalities on a trail almost impossible. The Wyoming wolf plan provides as follows:

“A total of 128 wolves were known to have died in Wyoming during 2016 (Table 1). Causes of mortality included agency removal ($n = 113$), natural causes ($n = 5$), other human-caused ($n = 5$), and unknown ($n = 5$).”⁷

Given there is no record of any wolf population decline from recreational activity being in the same area in the several states that have decades of high-quality data on the species, the Organizations are requesting that the lack of relationship be clearly and unequivocally stated in any planning documents. Minimizing these types of unintended social consequences from wolf management are already identified as a major management concern by the USFWS and are also exactly the type of social concern that Proposition 114 specifically requires to be addressed. The Organizations also submit that these types of indirect issues with management are the same

⁶ See, Wyoming Fish and Game; *Wyoming Gray Wolf Management Plan* 2011 at pg. 30.

⁷ See, Wyoming Fish and Game; *Gray Wolf* 2016 update pg. WY-6.

issues that the OHV community would also summarize as unacceptable impacts. The Organizations are open to whatever management tool allows these issues to be addressed, either optional management authority or through directly addressing the challenges in the 10j regulations.

2. The Organizations support management of all wolves under the single standard.

For most of the public, the mere identification of wolves when compared to other species such as coyotes and domestic dogs is difficult. The identification of various wolf populations from each other will be functionally impossible for managers and the public. The Proposal recognizes this management challenge by making the determination that all wolves in Colorado will be managed as part of the experimental non-essential populations, which is proposed as follows:

“As discussed below, we conclude that after initial releases, any gray wolves found in Colorado will, with a high degree of likelihood, have originated from and be members of the NEP. However, we recognize that absent identifying tags or collars, it may be very difficult for members of the public to easily determine the origin of any individual gray wolf. Therefore, we propose to use geographic location to identify members of the NEP. As such, any wolf within the State of Colorado will be considered part of the NEP regardless of its origin.”⁸

The Organizations believe this one administrative measure will go great distances in resolving conflicts around the wolf reintroduction. At least members of the public will not have to try and identify the genetic history of the wolf they are dealing with to try and obtain recovery of expenses to them from the reintroduction.

3(a)(1) The Organizations vigorously support the “optional management authority” for unacceptable impacts to ungulate populations.

⁸ See, Proposed Rule at pg. 41

The Organizations vigorously support the inclusion of what the Proposal calls “optional management authority” provided over wolves under the 10j Rule, which would be triggered when managers have determined unacceptable impacts are results from the presence of wolves at the local level. This optional management authority is outlined as follows in the Proposal:

“If wolf predation is having an unacceptable impact on wild ungulate populations (deer, elk, moose, bighorn sheep, mountain goats or antelope) as determined by the respective State or Tribe, a State or Tribe may lethally remove the wolves in question. “Unacceptable impact” is defined as an “Impact to ungulate population or herd where a State or Tribe has determined that wolves are one of the major causes of the population or the herd not meeting established State or Tribal management objectives.” States or Tribes must submit a science-based report showing the action meets regulatory standards. The Service must determine that an unacceptable impact to wild ungulate populations or herds has occurred and that the proposed lethal removal is science based and not in conflict with the State Plan.”⁹

As we outlined in our original scoping comments, the Organizations are very concerned about public response to ungulate populations declining at the local level due to the presence of wolves. The Organizations were pleased with the Service’s recognition of the need for management response of wolves that are creating unacceptable ungulate impacts in the Rule as follows:

“We have also requested input on whether to allow lethal management of gray wolves that are having a significant impact to ungulate populations. If allowed for the purpose of ungulate management, authorization for removal of wolves would require a science-based determination that an unacceptable impact to a wild ungulate herd has occurred and that removal of gray wolves would not impede wolf conservation.”¹⁰

⁹ DEIS at pg. ix.

¹⁰ Proposed Rule at pg. 45.

The Organizations vigorously support this rationale and concern. The Organizations are far more concerned about the indirect impacts of wolves on recreation, and this concern is driven by the fact that wolves will cause ungulate populations in many areas to decline. Some of these declines may be alarming or uncomfortably visible to the public. The Organizations are also aware that these declines will be hard to predict, could take years to understand for management response to even be proposed and then even longer for the management response to be approved. When the ungulate populations decline, recreational interests and users will be blamed for these declines and that could take years to remedy. This type of misdirected management has already been repeatedly recommended in the public comment received at the Colorado Wolf public meetings. This optional management authority would be a step in mitigating these types of impacts.

The Organizations are assuming that there would be some type of mandatory public process to be completed to support the local determinations of unacceptable impacts from wolves. We believe additional clarity on the nature of public engagement required would ease public opposition to these types of provisions being included and implemented. We would also like to clarify we do not envision this type of optional management authority being allowed only after an environmental assessment or environmental impact statement is approved. These NEPA based efforts would be FAR too long in providing the management authority to address the situation.

While we are asking for clarity and public engagement, we are also asking for these efforts to be streamlined and responsive to public concerns. Possibly outlining a simple public meeting and a process similar to preparation of a Categorical Exclusion with a file under NEPA would be an acceptable level of engagement? CPW already does this type of engagement in the development of herd plans for ungulates throughout the state. The Organizations believe this optional management authority would provide significant flexibility in management moving forward and mitigate the possibility of unintended impacts for communities and interests that might be impacted by wolf reintroduction impacts only identified decades after the wolf has been reintroduced.

3(a)(2) The scope of optional management should be clarified to include all management actions, including lethal take.

The Organizations are assuming that the full range of management authority is provided for when the Rule is addressing optional management authority once localized unacceptable impacts have been found. We would ask that the Rule clarify that the full tool box of optional management efforts is available to managers once the preliminary findings of unacceptable impacts has been raised. We would be concerned if the only resource available in this situation was lethal take.

This type of guidance in the Rule will be hugely valuable in educating the public and managers around effective management options to avoid unacceptable impacts. We are also aware that managers will continue to receive significant public input on wolf issues for years to come and often this comes with significant public pressure on both sides of the discussion. Specific recognition of a full range of management authority over the species will assist local managers in dealing with this pressure in the decision-making authority. While State and federal level managers might be able to distance themselves from this type of overly impassioned public input, the average local manager is unaccustomed to this type of input and may simply never be able to remove themselves from the input as they are members of the community being unacceptably impacted. While we believe these lesser management tools are allowed by implication, we are asking for clear and direct guidance that all tools be clearly and directly allowed for management of unacceptable impacts from wolves at the local level.

3(b) Optional management authority should be extended to include unacceptable impacts to all species.

The Organizations vigorously support the concept of “optional management authority” being expanded to all species. The Organizations vigorously urge the Service to remain focused on management of unacceptable impacts as the goal throughout the 10j process rather than trying to craft a species-based scope of management. The Organizations are vigorously requesting the broadest scope of management flexibility around the wolf as possible, as we are intimately aware of how long and twisting efforts to unwind efforts to mitigate impacts of a possibly listed species

or manage a listed species can be. While there is far more information about wolves available than ever before, many questions are far from resolved under the current management situation. Prop 114 implementation will bring wolf management into many new and unique situations that are not well understood and will result in unintended impacts that have never been thought about previously.

As proposed, optional management authority applicability to merely ungulate species is somewhat arbitrary and possibly hard to scientifically defend. It is well documented that wolves are highly effective generalized predators and feed on a wide range of species. While current public interests may be focused on ungulate populations, we are able to see a wide range of impacts where localized wolf predation could be found to be immediately unacceptable. Localized wolf predation on non ungulate species of concern, like Sage Grouse, would probably warrant application of a wide range of management tools, and we don't believe these tools should be limited by arbitrary standards. The wide range of species that wolves are known to prey upon are addressed in subsequent portions of these comments. The arbitrary nature of management standards will not be judged by the scope of understanding today but rather will be reviewed with the gift of hindsight from the perspective of having a full understanding of the impacts being addressed. These can be hugely different perspectives. Managers should be employed to address unacceptable impacts from wolves to all species as much as possible.

The types of unintended management issues are normally heightened when new or unique efforts are undertaken for a species. Prop 114 will bring wolves into other areas of the country that may not be thinking about wolves at all. Will Prop 114 bring wolves into Texas? Probably and questions like this will need to be addressed. Prop 114 will also create unique management challenges as wolves will be interacting with humans in and around population centers like never before. Currently, the Colorado population is 10x that of Wyoming and 5x that of Montana and compressed into a smaller geographic area, resulting in a higher human population density for Colorado than Wyoming or Montana. Simply due to these larger populations at greater densities, wolf interactions with domestic cats and dogs, animals on hobby farms, small zoos and domestic

pets in an urban park type situation will be hugely increased. Managers will need flexibility to address these types of impacts that will most certainly be seen as unacceptable. The Organizations would not want to be a local manager in a public meeting trying to address a recent rash of wolf predation on domestic pets and having to tell the public that only limited tools are available to address these unacceptable impacts due to USFWS regulations. This would be foolish at best and simply provide more fuel for opposition felt by the public for the Endangered Species Act generally. That should be avoided.

We would urge the Service to focus on management of unacceptable impacts and avoid any discussion that artificially limits the scope of these optional management authorities. The Service should focus on creating a 10j rule that is durable and flexible over time and allows for the most management flexibility to address all issues encountered. Prop 114 has been a new and unique effort from the day it started even as an idea for a ballot initiative and it will create management issues that are new and unique as well. We submit that the management flexibility from the optional management authority will help to avoid unintended impacts of species management that may only be recognized decades later. Even more protection against impacts will be achieved when this optional management authority is expanded to all species and situations where impacts are unacceptable.

3(c)(1) Unacceptable impacts from ESA issues may continue decades after species related issues are thought to be resolved.

After involvement in decades of issues involving ESA management and species reintroductions, we can say with absolute certainty that issues around listing a species or mitigating impacts to a species can simply linger. As they linger, they create significant conflict decades after the management actions have been undertaken. Often from the perspective of those still forced to deal with these impacts, these are unacceptable impacts. The Organizations are aware that often impacts to species or activities are not understood at the time the management action is taken for the species and may impact many other species in a negative manner.

The Organizations concerns on these types of unacceptable impacts are neither abstract nor remote as immediately prior to the creation of these comments, the Organizations were creating comments on the BLM's proposed land exchange in the Sand Hollow State Park area outside St. George, Utah.¹¹ This land swap would decimate OHV interests at a dedicated OHV State Park located in a BLM created SRMA in the St. George area, and as a result is a major concern for our interests. The history of this land swap provides concrete examples of why we are asking for maximum flexibility in management. This is a land swap that is still being explored to unwind unintended impacts resulting from a Habitat Conservation Plan ("HCP") that was created in the late 1980s for the benefit of the Desert Tortoise. While the Desert Tortoise was listed and the HCP was seen as a cutting-edge resolution of major concerns in the area, the HCP has fallen well short of resolving all interests. Many in the OHV community would summarize this entire land swap proposal as an unacceptable impact of the HCP.

While the HCP allowed significant development of the St. George community by expanding interstate connections, reservoirs and development of housing in possible tortoise habitat, the HCP was far from without problems. Interests of some private landholders in the Habitat Conservation Area created by the HCP were heavily impacted and remain unresolved despite more than 30 years passing since the HCP was signed. Many other users of public lands were also heavily impacted by the high levels of restrictions on uses in the Habitat Conservation Area("HCA"), such as the OHV community who lost access to more than 60k acres of riding areas with the HCP was implemented. The OHV community moved their activities into a Special Recreation Management area that was created in an attempt to mitigate these impacts several miles from the HCA. This SRMA was then leased to the State of Utah to develop a hugely successful State Park for those users and many others. In 2009, the HCA was transformed into a National Conservation Area by Congress. The current land swap proposal seeks to swap a portion of private lands in the HCA for lands in the State Park in an attempt to resolve on-going landowner concerns that arose more than 30 years ago. This lands swap proposal has reignited massive

¹¹ More information on this land swap is available here: [EplanningUi \(blm.gov\)](https://www.blm.gov/eplanningui)

conflict among users and we are doubtful that anyone creating the HCP would have foreseen this type of action in the future. These problems were simply never even thought of when the HCP was created but remain very ugly and very divisive in the community. These are unacceptable impacts of the HCP signed and HCA management more than 30 years ago that remain unresolved.

Could unintended impacts like this occur with wolves and possible impacts of wolves on other sensitive species? Absolutely as the reintroduction is moving at what can only be said are breakneck speeds to achieve any compliance with Prop 114. We would like to avoid situations where management of wolves and impacts from wolves was still occurring more than 30 years after the listing. This is simply unacceptable but could easily result simply due to the pace that all efforts are proceeding at.

3(c)(2). Draft Colorado legislation around wolf management is another example of why broad management authority is sought.

Development of wolf planning documents and analysis since the passage of Prop 114 has been moving VERY fast and often recognition of issues and challenges around the species are not even being recognized due to the rapid pace of development. This is a serious concern for the Organizations but despite the exceptionally rapid speed of the effort, unintended consequences have already come to light. An example of an unintended consequence of Proposition 114 would be reflected in Colorado Senate Bill 23-255 and SB23-256. A copy of these Legislative Proposals is attached as Exhibit "1" to these comments. In SB23-255 a separate appropriation of funds from the State to compensate for wolf damages would be provided for outside of existing funds generated by the sale of hunting and fishing licenses that are allocated to the existing game damage program. This fee-based model has been providing cost recovery for game damage claims for decades.¹² The CPW game damage fund has historically provided cost recovery for landowners who were impacted by species being on their property or alternatively for costs incurred by land owners who are trying to protect resources from damage by game species. This

¹² More information on this program is available here: [Colorado Parks & Wildlife - Game Damage \(state.co.us\)](https://state.co.us/parks-wildlife/game-damage)

program has reimbursed landowners for impacts to herd populations from predators, for costs of fencing and other materials to protect hay bales from consumption by ungulates. This land owner cost recovery program has been an integral part of maintaining wildlife populations in Colorado.

SB 23-255 has been submitted to address the fact landowners have already seen challenges in obtaining compensation from this program as landowners are preparing to protect these resources from impacts of wolves. While there is general state funding available to cover wolf reintroduction, this funding has not been sufficient to maintain the existing state program to allow cost recovery for existing species issues and cover costs of preparing for the wolf reintroduction. We have to assume that wolf costs are coming out of both programs and exhausting the traditional game damage funds. Here can be no argument that impacts such as this are clearly unintended in nature. When this issue had arisen, wolf planning was on the top of public concern and the Legislation was available to mitigate this unintended impact.

SB23-256 also represents another example of the types of challenges we anticipate to see continue well after wolves are on the ground. In SB23-256 the wolf reintroduction would be contingent on finalization and approval of the 10j Rule and without the finalization of the 10j Rule the reintroduction would not occur. While there has never been any substantive discussions in the CPW led efforts that the reintroduction could occur without the 10j Rule being in place, SB23-256 has been a hot button of conflict and misinformation across the State. We are very concerned that this type of misinformation and conflict is going to plague wolf discussions for a long time to come. From our perspective, these types of impacts are unacceptable in every sense of the word and we believe the clarity provided in the 10j Rule could be an effective tool in managing this type of unintended and unacceptable impacts.

The Organizations are concerned that many remedies to actual problems and impacts could be limited without the proposed optional management authority outlined in the Proposal. This legislation represents the type of management flexibility that will be needed for decades to

come, as we are simply unable to predict every possible impact to the state from the wolf reintroduction. We believe providing the greatest management flexibility as possible moving forward in the 10j Rule must be a priority as many in the hunting and fishing community would see the loss of these funds as an unacceptable impact of Prop 114.

3(c)(3) Economic costs of reintroduction have been horribly underestimated to date, which opens scary new opportunities for unacceptable impacts from Prop 114.

There can be no argument that the passage of Prop 114 was unprecedented in many ways, ranging from the reintroduction of species based on a ballot initiative to working on the aggressive timeframe required by Prop 114. The unprecedented nature of Prop 114 has created a wide range of challenges which has been compounded with a lack of information on many of these challenges. One of the areas where there is a critical lack of information from other efforts is information around costs for the effort, which has already seen multiple State Legislative actions taken in response to unforeseen or under estimated costs of the effort. While we are aware that costs are most directly an issue for CPW and the State of Colorado, the Organizations are concerned that the experiences with costs of the reintroduction are highly relevant to the 10j scope of management authority allowed in the designation and process. These are unacceptable impacts that have already attempted to be remedied within the short timeframe since passage of Prop 114. We can see no reason why these issues would just stop once wolves are on the ground, but rather we expect to see impacts become more apparent at a faster rate.

The scale of the consistent underestimation of costs for the reintroduction has been significant to date. Originally the Colorado Legislative Services estimated costs to be well under \$1 million totally and only \$346,000 for the first year.¹³ This estimate has proven to be overly optimistic as costs are currently estimated to be almost \$3 million this year alone. The comical underestimate of costs for the reintroduction of the gray wolf is also exemplified by the costs incurred by the

¹³ See, Colorado Legislative council memo prepared for Prop 114. A full copy of this document is available here. [2019-2020_107bb.pdf \(colorado.gov\)](https://leg.colorado.gov/documents/2019-2020_107bb)

most recent update of the Mexican Gray Environmental Impact Statement which is identified as follows:

“Estimated Lead Agency Costs Associated with Developing and Producing this FSEIS \$363,350”¹⁴

It goes without stating that the cost of a single Supplemental EIS for a reintroduced species being functionally the same as estimated total costs of a reintroduction causes great concern for the accuracy of any estimates for the total costs. We believe that this under estimation of costs will create impacts for managers for many years to come. As the reintroduction effort progresses, the Organizations have to believe that litigation of many aspects of the reintroduction will be a massive and ongoing issue. While we cannot estimate these costs accurately at this time given the huge number of variables, we can say from our experiences that litigation is expensive and could easily significantly increase the costs beyond even the highest levels estimated today.

The Organizations also must recognize the current general economic conditions in the country, both from the possibility of a recession looming and also the large amount of federal stimulus money currently available to states. We simply do not expect the large amount of stimulus money to be available at current levels for long and are unwilling to say our outlook for the economy in the next several years was optimistic. The Organizations must also address the current financial outlook for CPW generally. While the Organizations are aware that funding for the wolf reintroduction was now required to be funded by State General funds rather than CPW funds with the passage of Senate Bill 21-105, this funding is certainly not a bottomless source of funding. CPW camping reservations processes was recently audited by the State Auditor and the conclusion of the audit was eye opening to say the least. This audit found that CPW wildlife efforts were expected to lose \$30 million annually and Colorado Parks was expected to lose

¹⁴ See, DOI USFWS: PROPOSED REVISION TO THE REGULATIONS FOR THE NONESSENTIAL EXPERIMENTAL POPULATION OF THE MEXICAN WOLF; May 2022; cover page.

another \$10 million annually by 2025.¹⁵ Given the constricting nature of this funding and introduction of many new competing interests in the discussions, we believe that interests outside the wolf reintroduction will become more important.

The Organizations are asking for as much management flexibility around any assumptions or management responses as possible to allow for changes in costs to undertake any effort and possible limitations in funding becoming available. We vigorously support full compensation for agricultural interests for impacts from all wolves in the State as these are unacceptable impacts, similar to those that are the basis of the optional management authority. The 10j Rule should not be a barrier to management response to any unacceptable impacts but should streamline these types of management responses in every way and manner possible.

4(a). Management of migration corridors as proposed in the CPW plan are very concerning.

The Organizations would like to address one concept for management of wolves that has been included in the Proposed Colorado Wolf Plan (“The CPW Plan”), which is the designation of migration corridors for management. We include this concept in these comments as these corridors would occur predominantly on federal public lands, not State Lands and this management concept is deeply troubling. The Organizations are concerned that the migration corridors would serve as hotbeds of unacceptable conflict and impacts on federal lands for wolf managers. While the Proposal is attempting to mitigate these issues, the CPW Plan for a migration corridor management concept would render all the Proposal efforts null and void on the ground.

The Organizations are opposed to the inclusion of the concept of genetic management corridors for wolves in the Plan as this issue is generally viewed as academic and unresolved in nature. We do not contest that there are isolated situations where genetic diversity has been a challenge for

¹⁵ See, Colorado Office of the State Auditor, *Department of Natural Resources; State Park Campsite Reservations Performance Audit*; May 2022 2162P at pg. 4

sustaining wolf populations, such as the challenges faced by the Isle Royale pack living on a single island in the middle of Lake Superior or the tiny populations of a subspecies in Scandinavia. The wolf management situation in Colorado could not be further from this situation on the ground, as wolves easily move long distances and interact with other wolves throughout the region. Genetic diversity is an issue that should be addressed as wolves are selected for relocation and then monitored at most.

The Organizations will also express concern over another foundational assumption that is needed for the corridor concept, and that is the fact that wolves will only occupy small portions of the State. The Organizations must again question the basis of this determination as we are unable to identify a single source that thinks wolves will only stay on the Western Slope. Any conclusion that a lack of genetic variations will be a problem for the Colorado population is hugely premature. The situations where genetic diversity has been an issue and the Colorado reintroduction simply could not be more different in every way possible. Even if these corridors are found necessary to map, do they need to be managed? These are foundational questions that the Plan must address before determining these are even management issues and has not.

The genetic corridor management concept is outlined in the CPW Plan as follows:

“Safe passage within and between habitat areas is vital for allowing wolves to recolonize unoccupied habitat and for promoting genetic and demographic exchange between subpopulations, as it is for many wildlife species in Colorado. In Colorado, areas of greatest importance for restoring or maintaining connectivity between regions of suitable wolf habitat currently include various areas through western Colorado, primarily connecting areas that would likely have minimal interaction with livestock.

Other areas may be recognized in the future. Mechanisms to conserve lands and maintain working landscapes include conservation easements, agreements or land acquisitions with willing landowners, and other methods. Where appropriate,

working with the Colorado Department of Transportation to create wildlife crossing structures for assisting wolf movement across highways that act as barriers can be a beneficial and productive effort towards wolf management and conservation.”

The Organizations believe the CPW Plan skips many important steps in the analysis process before coming to the conclusion that there is a risk of genetic isolation of wolves in Colorado. Research indicating that western wolf populations have experienced genetic migration issues or that the reintroduced wolves will lack genetic diversity are simply never mentioned.

Unlike wolves that may be trapped on an island in the middle of Lake Superior, that can only enter or exit the island when the Lake waters freeze, western US wolves have demonstrated the ability to travel long distances to connect with other wolves. It is generally accepted that wolves in Colorado are the result of wolves being reintroduced in Yellowstone National Park, and have already traveled long distances without issue. Other wolves from Yellowstone NP have been found in California, Oregon and Washington. Similarly, wolves from the Great Lakes population have been found in Iowa, Nebraska and Kansas. This type of ability to travel has been demonstrated by other species as well, such as the wolverine known as M56, who was originally collared outside Yellowstone NP and subsequently made a globally known voyage across the western United States as he proceeded south to the San Juan Mountains in southern Colorado only to then turn northward and travel to South Dakota, where he was killed harassing cattle. Given this ability to travel with almost no restriction of many species, we must question why there would be a concern about genetic diversity in wolves.

The Organizations are also very concerned that the CPW Plan gives no guidance regarding general traits that might be managed in these genetic corridors. Additionally, the CPW Plan provides no guidance regarding what management of these undefined traits might look like in the corridor. Our research is unable to identify any situation where management for wolf corridors has been undertaken, making any meaningful discussion of our concerns impossible. The Organizations

remain deeply concerned that current oil and gas-based corridor management efforts will hugely impact recreational access, such as applying arbitrary route density standards in areas that have already been the subject of years of effort for site specific travel management planning. The Organizations submit that arbitrary wolf management concepts such as this are the exact reason, we are asking for management analysis and clarity for these areas be provided in the CPW Plan. Often new or novel management concerns are introduced in planning documents, found to be unnecessary or unwarranted and then parties impacted by the standard fight for decades to make the management effort stop.

The Organizations must ask how this hugely generalized genetic corridor standard does not conflict with previous assertions that Colorado lacks authority to mandate management on federal public lands. Any assertion that genetic corridors would only be occurring on lands of willing landowners or state managed lands simply lacks any credibility and will not be discussed further in these comments. Taking conflicting positions on basic issues such as the management of federal lands for wolves is entirely unacceptable. CPW needs to clearly and consistently apply standards for all forms of opportunities in these genetic migratory corridors or omit the genetic corridor concept entirely from the CPW Plan. The Organizations must state that the idea of reopening previously completed site specific NEPA efforts to address wolf genetic material corridors simply does not appeal to us. Addressing what has been called a novel academic concern will create years more work for partners, on issues that we were told were resolved. This concept would be creating the same type of conflict that Proposition 114 required the Wolf Plan to address and mitigate.

4(b) Wolves are habitat generalists making any habitat or migratory corridor mapping difficult to almost impossible.

The Organizations are unable to identify any scientific research or other materials to support the asserted need to manage migration corridors for wolves. Our research has found extensive materials available discussing why critical habitat, including corridors, for the western gray wolf

has **not** been designated. CPW resources also specifically state that wolves have freely moved long distances from Yellowstone area to Colorado as follows:

“Wolves that migrate in and out of Colorado would likely come from the Northern Rockies populations currently in the states of Montana, Idaho and Wyoming.”¹⁶

Again, this is another example of conflicting positions being taken in the CPW Plan without recognition of the conflict it will create with other provisions of the CPW Plan. The CPW Plan also fails to discuss the need for this type of management. This must be corrected as CPW should not assert wolves move freely over long distances and then subsequently assert wolves cannot move long distances easily and as a result there is a need for management of corridors to assist their movement. That would be immediately conflicting.

Clearly answering basic questions of why wolves would not be able to migrate or understanding why wolves would be migrating would be highly relevant. While some species of wolves rely on a food source that may migrate, this is not a wolf migration but migration of the food source wolves may be relying on. The relationship of wolves and prey is far from consistent and many wolves do not rely on migratory species as many wolves will establish a home range and then never move as they are highly effective habitat generalists and do not rely on a single food source for survival. The State of Washington clearly and directly states that wolves are generalists on prey species as follows:

“Wolves primarily prey on elk, deer, moose, and other ungulates, although they also feed on smaller species such as beaver, mice, squirrels, rabbits, muskrats, marmots, grouse, and even songbirds.”¹⁷

¹⁶ [Colorado Parks & Wildlife - Wolf Management \(state.co.us\)](http://coloradoparksandwildlife.com/wolf-management)

¹⁷ [The role of wolves in ecosystems | Washington Department of Fish & Wildlife](http://wdfw.wa.gov/wolves)

Recognition of the ability of the wolf to adapt to a wide range of habitat extends well beyond Washington State. The adaptability of wolves to pursue many species and exist in many conditions is highlighted by the USFWS on their webpage as follows:

“The wide range of habitats in which wolves can thrive reflects their adaptability as a species and includes temperate forests, mountains, tundra, taiga, grasslands and deserts. In North America, wolves are primarily predators of medium and large hooved mammals, such as moose, elk, white-tailed deer, mule deer, caribou, muskox and bison. Gray wolves have long legs that are well adapted to running, allowing them to move fast and travel far in search of food, and large skulls and jaws that are well suited to catching and feeding on large mammals. Wolves also have keen senses of smell, hearing and vision, which they use to detect prey and one another.”¹⁸

USFWS involvement also provides significant additional resources and management expertise to the wolf reintroduction on questions such as migration corridors. This is exemplified by the fact that USFWS already theorizes that the wolf population in Colorado is sustainable and able to travel long distances without migratory corridors, which has been clearly stated as follows:

“Post-delisting and subsequent monitoring, and the expansion of the NRM population into western Washington, western Oregon, northern California, and, likely, Colorado (USFWS 2020, pp. 15–19, 28; see also *Current Distribution and Abundance*), indicate that the wolf population in the NRM DPS remains well above minimum recovery levels (see *Current Distribution and Abundance*).”

Given the USFWS has already identified the wolves in Colorado are sustainable and can travel long distances, again the Organizations must question why corridor management would have

¹⁸ [Gray Wolf \(Canis lupus\) | U.S. Fish & Wildlife Service \(fws.gov\)](https://www.fws.gov/gray-wolf)

been thought to be necessary. Even the Center for Biological Diversity agrees with the above findings that wolves are habitat generalists and easily travel long distances as follows:

“HABITAT: Gray wolves are habitat generalists but need a sufficient prey base of ungulates and somewhat secluded denning and rendezvous sites. Areas with limited road access generally provide the best security for wolves.

RANGE: In the Great Lakes region, there are established breeding populations in Minnesota, Wisconsin and Michigan. Wolves have dispersed into North Dakota, South Dakota, Iowa, Missouri, Illinois and Indiana.

MIGRATION: Wolves do not migrate but travel over large areas to hunt, sometimes as far as 30 miles in a day; dispersing wolves may travel hundreds of miles in seeking mates.”¹⁹

The Organizations must question the basis for management corridors as a huge number of disinterested sources agree wolves have moved from the Great Lakes area to the Dakotas without managed corridors. Given the clear history of wolves traveling long distances without any species they are following, the Organizations believe that any corridor management concept must be addressed if this is even a management concern. These foundational decisions should be discussed in the CPW Plan and have not been. The Organizations submit that arbitrary wolf management concepts such as this are the exact reason, we are asking for flexibility in management for these areas to be provided in the Proposal. Often new or novel management concerns are introduced in planning documents, and then found to be unnecessary or unwarranted and then parties impacted by the standard have to fight for decades to make the management effort stop. Here the CPW Plan is creating conflicts on issues where the underlying questions are uniformly settled and everyone is in agreement with these determinations. Conflict with federal lands managers can only result from mandating management in these situations.

¹⁹ [Natural history \(biologicaldiversity.org\)](http://biologicaldiversity.org)

4(c) Critical habitat has never been designated for the gray wolf making any determination of corridors hugely premature.

The Organizations must recognize how horribly premature any discussion of connecting corridors is for western gray wolves. The position of the CPW Plan on migratory corridors is based on a rather unique interpretation of federal provisions for the management of species, that we would disagree with. Our concerns would center around the lack of any habitat designations for the wolf. These would be critical in determining there is a lack of connectivity. Without these determinations, we must question what we would be connecting.

The only designated habitat by the US Fish and Wildlife Service for wolves relates to the Eastern Timber Wolf and is located in Northern Minnesota.²⁰ We are unable to find a discussion of connectivity type issues in this designation of habitat. This is a major problem and would place CPW ahead of the USFWS on an issue they have exclusive jurisdiction over and would require the input of adjacent states on this issue which we are sure has not occurred. We are unable to locate any rulemaking or other efforts by USFWS to designate critical habitat for the western gray wolf.

We are also concerned that any attempt to create management corridors for wolves by CPW would immediately create problems with the enabling legislation for CPW. We are unable to find any provisions where CPW is granted management authority to create critical habitat designations over lands they do not own or is provided the authority to designate habitat in the manner proposed. While CPW has broad authority, they don't have the authority to manage in this manner. The remedy for concerns on connectivity is to work with the USFWS and collaborate with a huge number of interests in the USFWS planning effort. This simply has not occurred.

4(d). Genetic corridor management would immediately conflict with the 2018 US Supreme Court in *Weyerhaeuser*.

²⁰ See, DOI; USFWS; Endangered Wildlife and Plants; *Reclassification of the Gray Wolf in the United States and Mexico with determination of critical habitat in Michigan and Minnesota*; Federal register Vol 43 NO 47 at pg. 9607; March 9, 1978.

The Organizations would also have serious concerns that any management of genetic or migratory corridors on federal lands would immediately become problematic under the Weyerhaeuser²¹ decision from the US Supreme Court. In this decision, the Supreme Court addressed the critical habitat of the Gopher frog as follows:

“The Service found that each of those areas possessed the three features that the Service considered “essential to the conservation” of the frog and that required special protection: ephemeral ponds; upland open-canopy forest containing the holes and burrows in which the frog could live; and open-canopy forest connecting the two.”

The Court struck down the habitat designations and corridor related management for the dusky gopher frog as the USFWS failed to clearly identify and define the habitat for the species and how it related to the survival of the species. The definition of habitat remains an open issue with the USFWS, but given the Supreme Court’s concerns over management of lands that are not related to the survival of the species as habitat cannot be overlooked. The Organizations submit that given the proven success of the wolf as a habitat generalist, how could migration corridors ever be defined in a manner to exclude any portion of the State. Defining what is not habitat is as valuable as defining what is habitat for any species.

Given the Supreme Court’s concern over this type of arbitrary and overly generalized characterization of migration corridors for species, the Organizations must ask how these genetic corridors for wolves could ever be sustained, especially as many of these corridors will be crossing state boundaries with states that are not providing similar management. The Organizations submit that any attempt to manage genetic corridors for wolves would be creating exactly the type of conflict that the Colorado Wolf Plan is designed to be resolving. Rather than avoiding

²¹ See, *Weyerhaeuser Company v. United States Fish and Wildlife Service* 586 U.S. ____ (2018),

conflict this standard would create the basis for “I saw a wolf” based management identical to the failed management structure for the lynx we passionately want to avoid.

5. Conclusions.

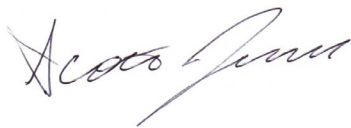
The Organizations welcome the participation of the Service in the Prop 114 efforts and the development of the 10j Rule for the experimental nonessential gray wolf population in Colorado. The Organizations are seeking the broadest and encompassing protections for all recreational access in the 10j designations that are stated in clear and unequivocal language, as after participating in ESA efforts for decades there is always an assertion that motorized recreation is negatively impacting the species. This continues despite numerous species-specific studies being developed and the decline of some species occurring even before motorized recreation was a concept and often impacts to activities like ours are summed up as unintended impacts of the listing. The Organizations submit that the optional management authority as proposed is a step in the right direction but also does not go far enough. We would request that the optional management authority encompass all forms of management and be extended to all species.

The Organizations submit a wide-ranging protection for recreation would be a significant step towards avoiding unintended consequences of the protection and reintroduction and reflect a decision that is highly solidified in best available science, mainly that recreational access and wolves are basically unrelated. With wolves in Colorado, the lack of relationship between these activities could not be starker as the gray wolf was hunted to extinction in the mid-1940s, decades before an off-road motorcycle or ATV was ever even a thought. The Service has provided similar protections around wolverines in Colorado and we would ask for language at least as strong as that previously provided in possible 10j designations for the Wolverines. Similar protections have been provided for the Mexican Gray wolf in Arizona and New Mexico and these protections have not proven to be strong enough, as even with these protections every time there is a planning effort, trails have to be reviewed for the protection of Mexican wolves.

The Organizations are very concerned that Prop 114, while unique and cutting edge in many ways, has ushered in what can only be summarized as an era of heightened conflict and challenges for managers and the State of Colorado more generally. This challenge is exemplified by the fact Prop 114 has already driven more State legislation than all other species reintroductions in the State combined. It is unfortunate that these challenges are far from understood or resolved at this point and we expect these conflicts to continue to grow and expand in ways that people simply never anticipated. As a result, we vigorously support the optional management as proposed. We would also vigorously expand the scope of authority provided by the Service to local managers under the Rule, to include non-ungulate species. At least this will allow the Service to avoid some of the conflict that we expect will continue to plague Prop 114 for the foreseeable future.

Please feel free to contact Scott Jones, Esq. at 518-281-5810 or via email at scott.jones46@yahoo.com or Chad Hixon at 719-221-8329 or via email at Chad@Coloradotpa.org if you wish to discuss these matters further.

Sincerely,



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