

DISTRICT COURT, DENVER COUNTY, COLORADO Denver City and County Building 1437 Bannock Street Denver, CO 80202 Phone Number: (720) 865-8301	DATE FILED: January 18, 2017 12:01 PM FILING ID: 9D0F07A760C30 CASE NUMBER: 2017CV30219
Plaintiff: WILDEARTH GUARDIANS v. Defendants: COLORADO PARKS AND WILDLIFE COMMISSION, COLORADO PARKS AND WILDLIFE, and COLORADO DEPARTMENT OF NATURAL RESOURCES.	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Attorney for Plaintiff: Stuart Wilcox WildEarth Guardians 2590 Walnut Street Denver, CO 80205 (720) 331-0385 swilcox@wildearthguardians.org Atty. Reg. #: 44972	Case No. Div. Court Room No.
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF	

Plaintiff WildEarth Guardians files this Complaint for Declaratory and Injunctive Relief challenging Colorado Parks and Wildlife’s Piceance Basin Predator Management Plan, Colorado Parks and Wildlife’s Upper Arkansas River Predator Management Plan, and the Colorado Parks and Wildlife Commission’s December 14, 2016 approval of those Plans.

I. INTRODUCTION

1. Plaintiff WildEarth Guardians (“Guardians”) challenges Colorado Parks and Wildlife’s (“CPW”) Piceance Basin Predator Management Plan and CPW’s Upper Arkansas River Predator Management Plan (collectively “Plans”) and the Colorado Parks and Wildlife Commission’s (“Commission”) (collectively “Agencies”) December 14, 2016 approval of the Plans.

2. The Plans and their approval violate the Colorado Constitution, Art. 18 § 12(b) (“Amendment 14”), and the legislation and regulations implementing Amendment 14, COLO. REV. STAT. §§ 33-6-201, *et seq.*; 2 CODE COLO. REGS. §§ 406-0, *et seq.*

3. The Plans and their approval also are in violation of the Colorado Administrative Procedure Act (“APA”), COLO. REV. STAT. § 24-4-106.

4. Plaintiff seeks an order holding unlawful and setting aside the Plans, a declaration that the Plans are unconstitutional and contrary to law, an injunction barring implementation of the Plans, and such other and further relief as the Court deems appropriate.

II. JURISDICTION AND VENUE

5. This Court has jurisdiction over this matter pursuant to COLO. REV. STAT. § 24-4-106, which allows judicial review of agency action for “persons or parties adversely affected or aggrieved by agency actions.” Plaintiff filed this action within 35 days of the effective date of the Commission’s decision on the Plans. COLO. REV. STAT. § 24-4-106(4). This Court also has jurisdiction pursuant to C.R.C.P. Rule 57 to declare the proposal and approval of the Plans unlawful. Finally, the APA, COLO. REV. STAT. § 24-4-106(7), and C.R.C.P. Rule 65 provide this Court with jurisdiction to grant injunctive relief.

6. Venue is proper in this Court pursuant C.R.C.P. Rule 98 and COLO. REV. STAT. § 24-4-106(4). The residence of a state agency under the APA is the City and County of Denver and claims under the APA are brought in the district courts.

III. PARTIES

7. Plaintiff WILDEARTH GUARDIANS sues on behalf of itself and its members. Guardians is a non-profit environmental advocacy and conservation organization based in Santa Fe, New Mexico. Guardians has offices throughout the West, including an office in Denver, Colorado. Guardians has more than 200,000 members and supporters. Many of these members and activists reside in and/or recreate in Colorado. Guardians and its members are dedicated to protecting and restoring the wildlife, wild places, wild rivers, and health of the American West.

8. Guardians’ members have scientific, educational, and recreational interests in black bears (*Ursus americanus*) (“bear”) and mountain lions (*Puma concolor*). Members recreate in bear and mountain lion habitat, including on or near many of the lands that will be negatively affected by the Plans. Guardians’ members have looked for and viewed these species in the wild. They will continue these pursuits in the future. Guardians has long been involved in opposing trapping and protecting native wildlife in Colorado. Recent actions include opposing the Plans by providing comments and testimony to CPW urging the agency to abandon the Plans, by providing formal comments to the Commission urging it not to approve the Plans, and by providing a formal presentation in opposition to the Plans at the Commission’s December 14th meeting. In addition, at least 736 of Guardians’ Colorado members and supporters urged the Agencies to abandon the Plans via public comment.

9. Defendant COLORADO DEPARTMENT OF NATURAL RESOURCES is an

administrative agency of the State of Colorado created under COLO. REV. STAT. §§ 24-33-101, *et seq.* Both CPW and the Commission are part of the Colorado Department of Natural Resources.

10. Defendant COLORADO PARKS AND WILDLIFE is a division of the Colorado Department of Natural Resources. COLO. REV. STAT. § 33-1-104. CPW finalized proposals of the Plans and submitted those proposals to the Commission for approval. CPW will also be primarily responsible for implementation of the Plans.

11. Defendant COLORADO PARKS AND WILDLIFE COMMISSION is a division of the Colorado Department of Natural Resources. COLO. REV. STAT. § 33-1-104. The Commission is a board appointed by the Governor that makes management decisions implicating Colorado's state parks and wildlife. The Commission approved the Plans.

IV. FACTS AND GENERAL ALLEGATIONS

a. History of the Restrictions on Trapping in Colorado

12. Colorado citizens have long been concerned about CPW's¹ policies that allow for the inhumane treatment of wildlife and that insufficiently protect wildlife with dependent young.

13. In 1992 Colorado voters passed, with a 70% majority, an initiative banning bear hunting every year from March 1 to September 1 to protect female bears with dependent young.

14. Around the time of the spring bear hunt ban, Coloradans were also voicing their concern that CPW was failing to adequately prevent inhumane trapping practices. In an attempt to avoid a voter-initiated trapping ban, Governor Roy Romer called the first ever, and only, state wildlife convention. Over 600 people attended. The purpose of the convention was to garner support for updates to CPW's long-range plan and to address growing public concern about wildlife trapping.

15. As part of its 1994 long-range plan, CPW was required to develop and implement new standards for trapping. As part of this process, CPW completed a study in 1995 of Coloradans attitudes towards trapping. The study found that 61% of Colorado residents would vote to ban **all** trapping in Colorado. *See Colorado Residents' Attitudes Toward Trapping in Colorado* (DOW, No. 24, July 1995).

16. CPW also convened a stakeholder process that solicited opinions from wildlife advocates, trappers, and ranchers. This stakeholder group was unable to come to consensus. CPW instead chose its own option that it recommended to the Department of

¹ In 2011, Colorado State Parks merged with the Colorado Department of Wildlife to form Colorado Parks and Wildlife. To avoid confusion, this Complaint will refer to both CPW's predecessor agencies and CPW simply as "CPW."

² The Colorado Parks and Wildlife Commission was established in 2012. However, the

Wildlife Commission (now the Colorado Parks and Wildlife Commission)² that the Commission subsequently adopted.

17. These trapping standards were inconsistent with the expressed desires of Colorado citizens. As a result, led by then University of Denver Professor of Biology Robert Angell, citizens developed a ballot initiative to expand the existing restrictions on trapping in Colorado. In 1996, Colorado voters adopted this initiative, known as Amendment 14. The General Assembly subsequently promulgated legislation implementing Amendment 14's trap ban and CPW promulgated regulations doing the same.

18. Despite the clearly expressed desire of Colorado citizens to ban trapping and the enactment of the constitutional amendment, laws, and regulations that were created to effectuate that intent, the Commission approved the aforementioned Plans, as proposed by CPW, at the December 14, 2016 Commission meeting in Fort Collins, Colorado.

b. History of the Plans

19. Around 1999, certain hunting interests, primarily on the West Slope, began to pressure the Commission and Colorado Legislature to act to reverse Colorado's perceived mule deer decline. In response to this pressure, CPW biologists issued a comprehensive and lengthy report to the Legislature regarding the issue. The agency's report stated emphatically, "No studies have demonstrated that coyote predation has caused entire deer herds to decline or have prevented herds from increasing" (Gill, et al., 1999: 19).

20. Responding to the biologists' report, these individuals and organizations lobbied the Legislature to pass a bill in 2000 that formed the Predator Management Advisory Committee ("PMAC"). The PMAC then issued its own report, which ordered CPW to develop plans to control predators to benefit mule deer. In response, CPW developed management plans for coyotes, mountain lions, and bears. For coyotes, the agency offered a suite of recommendations including coyote "ears for deers" – a bounty program; hunter education courses to teach hunters how to "call and shoot" coyotes; decoy dogs; and an aerial gunning study on coyotes. Because CPW's proposed aerial gunning study would have cost taxpayers \$2.3 million to implement, it was sent to the Legislature for funding approval where it was promptly killed in a budget committee. None of the other proposals ultimately materialized either, largely because of public opposition.

21. A decade and a half later, CPW hired The Keystone Center, a non-profit whose goal is to "independently facilitate the resolution of national policy conflicts" to hold a series of meetings designed to gather input from stakeholders about what they believe is causing perceived mule deer declines. Unfortunately, meetings focused largely on a

² The Colorado Parks and Wildlife Commission was established in 2012. However, the Department of Wildlife Commission preceded it. Again, to avoid confusion, this Complaint will refer to both Commissions simply as "Commission."

narrow segment of the public – those living on the West Slope – and mostly excluded the Front Range, where a majority of Colorado’s citizens live. The Keystone Center issued its 2014 “Public Engagement Report” after conferring with just 170 Coloradans. The report states that most participants in these hearings believe that Colorado’s mule deer are declining, that this stems from predation by coyotes and mountain lions, and that the least important factor in their decline is weather. This is not a scientific conclusion that might form the basis of sound policy decisions or scientific studies. It is merely a skewed survey of public opinion that does not represent the beliefs of the State’s population as a whole.

22. Despite apparent concern by hunters over mule deer population trends, mule deer populations in Colorado have been growing significantly in recent years. In 2013 there were an estimated 390,000 mule deer in Colorado. However, in 2014 the population had grown to 424,000, in 2015 it was 436,000, and CPW predicted the population would be around 440,000 at the end of 2016. At this average rate of increase, 16,667 mule deer per year, CPW would meet its population goal of 501,000-557,000 mule deer in 2020, without spending over \$4 million dollars to kill bears and mountain lions. Additionally, in a 2015 study, CPW’s own scientists said that mule deer populations in the Piceance Basin specifically had increased in three of the four surveyed locations over the last seven years (densities increased from 6.5-10.3 mule deer per kilometer) and had been stable in the fourth. This data also identified very few mountain lion predations in this area and did not identify a single instance of bear predation there. Despite the increase in mule deer numbers and the evidence of very low predation, CPW and the Commission devised and approved the Plans.

23. CPW’s current goals are based on mule deer inhabiting historical habitat. That habitat includes areas that have been removed and/or degraded by development. Remaining habitat may be of higher quality than some of the lost habitat, supporting healthier deer in those more limited areas. But in setting population goals, CPW has failed to adequately consider the impacts of the loss of large amounts of historic habitat.

24. The Piceance Basin Predator Management Plan intends to kill between 5-15 mountain lions and 10-25 bears per year for three years in a 500 square mile area west of Meeker and Rifle Colorado. CPW has no site-specific estimate of the mountain lion or bear populations in this area. However, if CPW’s general estimates of mountain lion and bear densities for Colorado as a whole apply here, the total population of the study area would be roughly 36 mountain lions and 120 bears. Therefore, though CPW has failed to estimate the populations, it appears these killings could remove, in the first year alone, in excess of 42% of the mountain lions and 21% of the bears in an area showing low predation by mountain lions and no predation by bears.

25. CPW plans to employ the U.S. Department of Agriculture’s Wildlife Services program to use cage traps, culvert traps, foot snares, and trailing hounds to capture and then shoot mountain lions and bears as part of the Piceance Basin Plan. CPW will then compare mule deer fawn survival in the killing area to an area east of Meeker and Rifle where ongoing killings of these species will be occurring at a lower level (again CPW

does not have any site-specific estimate of populations). The alleged intent of this bear and mountain lion killing campaign is to study the effects that killing these species has on mule deer recruitment.

26. The Upper Arkansas River Predator Management Plan intends to primarily rely on increased hunting to kill a goal of 50% of the mountain lions in a 2,370 square mile area in south central Colorado (Data Analysis Unit (“DAU”) D-16) over an initial three-year period. During this three-year period, CPW will attempt to use hunters to kill approximately 10% of the local population in an adjacent 2,517 square mile area (DAU D-34) as well. In the three years following this initial stage, CPW will attempt to use hunters to kill 10% of the mountain lions in both areas (DAUs D-16 and D-34). Then, in the final three years, CPW will attempt to use hunters to kill 50% of the mountain lions in DAU D-34 and 10% of the mountain lions in DAU D-16. Should hunters fail to kill enough mountain lions, CPW intends to hire Wildlife Services to trap and kill the remaining lions in the DAUs. CPW has no site-specific mountain lion population estimates for this area. Similar to the Piceance Basin Plan, the alleged intent of this mountain lion killing campaign is to study the effects of killing mountain lions on mule deer numbers.

27. In 2015, CPW was only proposing the Upper Arkansas River Plan. CPW withdrew its proposal for that Plan due to public involvement concerns and an inability to timely complete a requested cost-benefit analysis. CPW renewed its plans in 2016 and held a meeting to discuss the Upper Arkansas River Plan on August 15, 2016 in Salida, Colorado. This meeting was poorly advertised and was only attended by five people. CPW also held a meeting in Rifle, Colorado the following day to discuss the Piceance Basin Plan, believed to be the first public discussion of that Plan.

28. On September 19, 2016 the Commission held a listening session in Denver, Colorado. In advance of this session, CPW provided the public with bare bones outlines (“the Pamphlets”) of the Plans. Guardians provided testimony and written comments at the session, including 22 questions that were left unanswered by the Pamphlets.

29. The public testimony at the listening session was overwhelmingly opposed to the Plans. However, CPW had already decided, prior to the aforementioned September 19, 2016 listening session, to propose the Plans to the Commission largely as written.

30. In accordance with the Commission’s rules, Guardians requested, and was granted, the opportunity to provide a short 15-minute presentation outlining some of the many flaws with the Plans at the Commission’s December 14, 2016 meeting.

31. CPW eventually released some additional information relating to the Plans on November 29, 2016, just over two weeks before the Commission meeting.

32. The proposed Plans drew substantial public outrage. Guardians is aware of two petitions approaching a combined total of 200,000 signatories in opposition to the Plans. Guardians is also aware of at least 6,500 Coloradans who provided comments to the

Commission in opposition to the Plans and, as of November 30, 2016, the Commission had received a tentative estimate of over 5,000 emails relating to the Plans, nearly 99% of which opposed the Plans.

33. The comments the Commission received include two letters, signed by a total of 24 well-respected scientists and scholars with expertise in these issues, pointing out many of the scientific shortcomings of the Plans. Guardians contributed to and signed on to two sets of additional comments and encouraged its members to provide their own comments. Additionally, at the Commission meeting, one of the commissioners said there were more members of the public at that meeting than he had ever seen at a Commission meeting before. A large majority of those providing testimony at the Commission meeting opposed the Plans.

34. Comments on the Plans illuminate many problems with the Plans, some of which are outlined here. The Plans are not sound science because, among other things: (1) the Plans lack a proper control; (2) CPW's choice of locations creates a sample bias; (3) the sample size is too small to confirm or reject the Plans' hypotheses; (4) the Plans do not seek to answer any unanswered question; (5) the Plans would not meet the standards for publication in a peer-reviewed scientific journal; and (6) the Plans assume a fact, that mule deer numbers are decreasing, that is not supported by the available information. Comments also explained that, contrary to CPW's assertion the available information indicates that the Plans are contrary to the vast majority of Coloradans' desires. The comments indicate that addressing development and threats other than predation stand a much better chance of increasing mule deer populations. The comments explained that CPW had not provided adequate analysis of the impacts that the Plans would have on bear and mountain lion populations, and indeed that CPW does not even know what the population numbers are in these areas. The comments identified many ways in which the Plans violate the law, including Amendment 14 and its implementing legislation and regulations. The comments explain that there is no indication that the Plans will be carried out in a humane manner, and that the available information indicates they will not be. These comments identified many instances where CPW had drawn unwarranted inferences from the available science. Also, the comments identified many highly relevant scientific articles, including science published by CPW's own scientists, that CPW entirely failed to consider.

35. CPW's and the Commission's constituency – evidenced by the vast majority of comments – opposes the Plans. The comments provided by scientists and other members of the public, established the Plans are bad policy and bad science.

36. CPW and the Commission approved the Plans in the face of significant opposition based on scientific concerns and inconsistency with Amendment 14 and the laws and regulations implementing Amendment 14.

V. LEGAL BACKGROUND AND VIOLATIONS OF THE LAW

a. Amendment 14 and the APA

37. The drafters of Amendment 14 and those who voted in favor of it intended to ban the use of poisons and certain traps throughout the State, subject to limited exemptions.

38. Amendment 14, now Colorado Constitution, Article 18 § 12(b), provides as follows:

- (1) It shall be unlawful to take wildlife with any leghold trap, any instant kill body-gripping design or trap, or by poison or snare in the state of Colorado.
- (2) The provisions of subsection (1) of this section shall not prohibit:
 - (a) The taking of wildlife by use of the devices or methods described in subsection (1) of this section by federal, state, county, or municipal departments of health for the purpose of protecting human health or safety.
 - (b) The use of the devices or method described in subsection (1) of this section for controlling:
 - (I) wild or domestic rodents, except for beaver or muskrat, as otherwise authorized by law; or
 - (II) wild or domestic birds as otherwise authorized by law;
 - (c) The use of non-lethal snares, traps specifically designed not to kill, or nets to take wildlife for scientific research projects, for falconry, for relocation or for medical treatment pursuant to regulations established by the Colorado Wildlife Commission; or
 - (d) The use of traps, poisons or nets by the Colorado division of wildlife to take or manage fish or other non-mammalian aquatic wildlife.
- (3) Notwithstanding the provisions of this section 12, the owner or lessee of private property primarily used for commercial livestock or crop production, or the employees of such owner or lessee, shall not be prohibited from using the devices or method described in subsection (1) of this section on such private property so long as:
 - (a) such use does not exceed one thirty day period per year; and
 - (b) the owner or lessee can present on-site evidence to the division of wildlife that ongoing damage to livestock or crops has not been alleviated by the use of non-lethal or lethal control methods which are not prohibited.
- (4) The provisions of this section 12 shall not apply to the taking of wildlife with firearms, fishing equipment, archery equipment, or other implements in hand as authorized by law.
- (5) The general assembly shall enact, amend, or repeal such laws as are necessary to implement the provisions of this section 12, including penalty provisions, not later than May 1, 1997.
- (6) As used in this section, unless the context otherwise requires:
 - (a) The term “taking” shall be defined as provided in section 33-1-1-2(43), C.R.S., on the date this section is enacted.
 - (b) The term “wildlife” shall be defined as provided in section 33-1-102(51),

C.R.S., on the date this section is enacted.

39. By its terms, Amendment 14 creates a complete bar to **any person** using **any** snare to take wildlife in the state of Colorado with the exception of certain carefully delineated and constrained circumstances. Neither the drafters nor the voters intended to allow otherwise prohibited trapping, including snaring, for scientific research purposes where the trappers would kill the animal after capturing it live.

40. Bears and mountain lions are wildlife as defined in COLO. REV. STAT. § 33-1-102(51).

41. The term “take” means “to acquire possession of wildlife . . .” COLO. REV. STAT. § 33-1-102(43). “Possession” means “either actual or constructive possession of or any control over the object referred to.” COLO. REV. STAT. § 33-1-102(34). As a result, the trapper takes wildlife immediately upon the animal being captured in the trap. No additional action beyond successfully setting a trap is required to perfect the take.

42. The Colorado Legislature implemented Amendment 14 by promulgating COLO. REV. STAT. §§ 33-6-201, *et seq.* COLO. REV. STAT. § 33-6-201(b) explains that the purpose of the statute is “to honor the expressed desire of the people of Colorado to promote humane methods of animal control and discourage the use of inhumane methods while preserving the ability to protect human life, health, safety, and property by taking wildlife when there is no practical alternative.”

43. COLO. REV. STAT. § 33-6-206 explains that even non-lethal snares cannot be used, except for purposes of:

- (a) bona fide scientific research;
- (b) falconry;
- (c) relocation permitted in accordance with rules of the division; or
- (d) medical treatment of the animal being captured.

44. The aforementioned non-lethal purposes all prohibit killing the trapped animals. In fact, the legislative declaration refers to this section as “Exemptions – nonlethal methods” and CPW’s own regulations refer to COLO. REV. STAT. § 33-6-206 as the “Nonlethal Methods Exemptions” in two places. See 2 CODE COLO. REGS. §§ 406-302(B)(2), 406-900(c)(28). Therefore, even CPW understands that only nonlethal scientific research is envisioned by the exemption.

45. CPW’s regulations define “bona fide scientific research” as:

systematic investigative or experimental activities which are carried out for the purpose of acquiring new and relevant knowledge pertaining to wildlife biology, ecology or management, or the revision of accepted conclusions, theories, or laws in the light of newly discovered facts, and which are conducted in a humane fashion by qualified personnel, and the results of

which would meet the accepted standards for publication in a refereed scientific journal.

2 CODE COLO. REGS. § 406-1300(A).

46. The APA directs the courts to hold unlawful and set aside agency actions and restrain the enforcement of orders and rules “[i]f it finds that the agency action is arbitrary or capricious, a denial of statutory right, contrary to constitutional right, power, privilege, or immunity, in excess of statutory jurisdiction, authority, purposes, or limitations, not in accord with the procedures or procedural limitations of this article or as otherwise required by law, an abuse or clearly unwarranted exercise of discretion, based upon findings of fact that are clearly erroneous on the whole record, unsupported by substantial evidence when the record is considered as a whole, or otherwise contrary to law...” COLO. REV. STAT. § 24-4-106(7). C.R.C.P. Rule 57 also authorizes the courts to render declaratory judgments and C.R.C.P. Rule 65 also authorizes the courts to provide injunctive relief.

b. Violation of Amendment 14

47. Amendment 14 applies to both Plans because CPW intends to use Wildlife Services to trap and kill the mountain lions and bears as part of the Piceance Basin Plan and also to use Wildlife Services to trap and kill mountain lions as part of the Upper Arkansas River Plan if trophy hunters do not kill enough mountain lions to meet CPW’s population reduction goals.

48. CPW’s attempt to shoehorn the Plans into the exemptions to Amendment 14 fails to withstand scrutiny. First, the “bona fide scientific research” exemption does not allow for trapped animals to be subsequently killed. Second, even if post-capture killing were allowed, the Plans are merely disguised bear and mountain lion killing campaigns, not bona fide scientific research that could meet the requirements of that exemption.

49. Because the Plans do not constitute “bona fide scientific research” under CPW’s definition, or any other reasonable definition of that term, they are not exempted from Amendment 14’s restrictions. Therefore, the Plans and their approval are in violation of the APA and in violation of Amendment 14 and the laws and regulations implementing Amendment 14.

50. First, the extensive public comments and the scientific sources that Guardians and the other commenters identified indicate that the Plans are not designed to, and indeed will not, produce new or relevant knowledge. The Plans are not sound science and are not designed to remedy an existing problem, but are instead disguised predator killing campaigns, and they do not meet this requirement. As a result the Plans are not exempt from Amendment 14’s restrictions and are thus in violation of Amendment 14 and its implementing laws and regulations.

51. Additionally, because the record does not support that the Plans are designed to produce new or relevant knowledge and because the Plans did not follow from the available science, the Plans and the Commission's approval of the Plans is in violation of the APA.

52. Second, there is no indication anywhere in the record that the Plans will be conducted in a humane fashion by qualified personnel. In fact, the available information shows that Wildlife Services' agents or contractors and the private hunters who will carry out the killings under the Plans are not qualified personnel and/or that they will not carry out the Plans in a humane manner. CPW failed to provide adequate analysis or binding standards on this issue.

53. Additionally, CPW failed to provide animal care and use committee ("ACUC") guidelines for bears. This indicates that CPW gave **no** consideration as to whether the Piceance Basin Plan's design complied with ACUC guidelines or would ensure humane treatment of bears.

54. CPW did not adequately address whether the Plans will be conducted in a humane fashion by qualified personnel and the available information indicates they will not be. As a result, the Commission did not have sufficient information for it to determine that the Plans will be conducted in a humane fashion by qualified personnel. Because neither CPW nor the Commission can show that this requirement is met, and because the available information shows that it will not be, the Plans and their approval are in violation of the APA, Amendment 14, and the laws and regulations implementing Amendment 14.

55. Finally, the Plans do not meet the accepted standards for publication in a refereed scientific journal. The aforementioned scientific shortcomings of the Plans and of CPW's and the Commission's analysis of the science indicate that the Plans do not meet this requirement.

56. CPW refused to meaningfully address this issue. In fact, at the Commission meeting, CPW said that it would determine if the Plans would meet these accepted standards **after the Plans had already been implemented**. This jumps the gun. When the killings have already occurred, the harm will have been done. A determination at that point that the Plans do not meet these standards and that they were thus in violation of Amendment 14 cannot restore the killed bears and mountain lions.

57. Because neither CPW nor the Commission can show that the Plans would meet the accepted standards for publication in a refereed scientific journal, and because the available information shows that they would not, the Plans and their approval are in violation of the APA, Amendment 14, and the laws and regulations implementing Amendment 14.

58. CPW essentially provides conclusory statements, or no statements at all, as to its compliance with the standards for bona fide scientific research. As discussed above, the

available information shows that CPW's conclusions and assumptions are incorrect and that the Plans are not bona fide scientific research. However, even after being notified of these many flaws, CPW and the Commission still moved forward with the Plans. CPW's Plans and the Commission's approval of the Plans are in violation of the APA, Amendment 14, and the laws and regulations implementing Amendment 14.

c. Violations of CPW's and the Commission's Fundamental Responsibilities

59. CPW's and the Commission's management of wildlife is constrained by many directives. CPW and the Commission have failed to comply with these requirements by failing to adequately address the impacts of the Plans on bears and mountain lions and by approving the Plans in spite of their many deficiencies. This failure is in violation of the APA.

60. The legislative declaration of CPW's responsibilities as to wildlife begins: "[i]t is the policy of the state of Colorado that the wildlife and their environment are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and its visitors." COLO. REV. STAT. 33-1-101. In recognition of these responsibilities, CPW's mission includes "to perpetuate the wildlife resources of the state..."

61. In addition, pursuant to COLO. REV. STAT. § 33-1-106(1), the Commission must "maintain adequate and proper populations of wildlife species." The Commission may make a decision affecting wildlife populations only after it conducts an investigation and determines the action is "necessary to assure maintenance of adequate populations of wildlife or to preserve the proper ecological balance of the environment." COLO. REV. STAT. § 33-1-106(1)(a).

62. CPW states that threats to bears and mountain lions from the Piceance Basin Plan will be managed in part by relocating trapped mountain lion and bear families at least 30 miles away from the study area. However, in the Upper Arkansas Plan proposal, CPW states that "past research has indicated that for relocations to be successful, the relocation distance should exceed 300 miles and survival of relocated animals tends to be low."

63. In addition to this arbitrary management measure, CPW says that it expects "a low number of family groups to occupy the relatively small area where predator reduction will occur." CPW provides no factual support or analysis for this conclusion. The killings in the Piceance Basin Plan will occur entirely during the time that Colorado voters saw fit to ban bear hunting to protect dependent young. CPW effectively ignored this threat.

64. Additionally, CPW provides no analysis for its conclusory statements indicating that these killings will have no effects on the mountain lion and bear populations. CPW fails to explain how these killings can both have no impact on local populations of targeted species and kill enough individuals to reduce populations so that CPW can test its

hypothesis that predation is causing mule deer declines, the stated goal of the Plans. Indeed these claims are fundamentally inconsistent.

65. CPW is in fact unable to make a determination of effects to the bear and mountain lion populations in the first place. CPW admits that it has little ability to accurately determine bear and mountain lion populations in these areas and that it has little or no site-specific evidence supporting its population estimates. However, the designs of the Plans rely on killing a certain percentage of the bears and/or mountain lions in the relevant areas. CPW does not have the data necessary to make these conclusions. CPW is not adequately protecting these species or ensuring the ongoing health of their populations, in violation of its statutory mandate and mission.

66. CPW's failure is in violation of the APA. Additionally, because CPW has provided an inadequate basis for the Commission to approve the Plans, the Commission's approval of the Plans is likewise in violation of the APA.

67. The Commission's Predator Control Policy also authorizes killing "[w]hen predator populations are inhibiting the ability of [CPW] to attain management objectives for other wildlife populations and [CPW] determines that predator control actions are necessary..." By claiming the Plans are scientific research, CPW and the Commission have explicitly not determined that these actions are necessary before authorizing them. That is the hypothesis the Plans allegedly will answer. As a result, the Plans also violate the APA because they are inconsistent with the Commission's policies.

d. Injunctive Relief

68. The APA, COLO. REV. STAT. § 24-4-106(7), and C.R.C.P. Rule 65 provide this Court with jurisdiction to grant injunctive relief where an agency action is unconstitutional or is in violation of the law or regulations.

69. There exists the danger of real, immediate, and irreparable injury to Guardians and its members, which may be prevented by the injunctive relief sought herein.

70. These injuries derive from the unwarranted and illegal killing of bears and mountain lions that will take place as part of the Plans and Guardians' and its members' scientific, educational, and recreational interests in those species.

71. Guardians and its member have no other plain, speedy, and adequate remedy at law that will fully address the injuries already suffered or the imminently existing danger of future injuries.

72. The injuries that Guardians and its members face outweigh any harm that the injunction may have on Defendants.

73. The issuance of an injunction will not disserve the public interest.

74. The public interest favors an injunction.

75. Guardians and its members are entitled to a permanent injunction in this case prohibiting the Defendants from carrying out the Plans.

VI. FIRST CLAIM FOR RELIEF

(Violation of Colorado APA, COLO. REV. STAT. § 24-4-106 – Plans in Violation of Colorado Constitution, Laws, and Regulations and Contrary to Law)

76. Plaintiff incorporates the foregoing paragraphs by reference.

77. Colorado Constitution, Article 18, § 12(b), COLO. REV. STAT. §§ 33-6-201, *et seq.*, and 2 CODE COLO. REGS. §§ 406-0, *et seq.*, ban all taking of wildlife by snare except under certain circumstances, including for the purposes of bona fide scientific research.

78. The Plans allow trapping of wildlife by snare, but do not meet the bona fide scientific research exemption, or any other exemption.

79. CPW's and the Commission's actions are thus unconstitutional and in violation of statutory authority and regulations under COLO. REV. STAT. § 24-4-106. This Court can declare CPW's and the Commission's actions unlawful under the APA and enjoin implementation of the Plans.

VII. SECOND CLAIM FOR RELIEF

(Request for Declaratory Judgment Pursuant to C.R.C.P. Rule 57 – Plans in Violation of Colorado Constitution, Laws, and Regulations and Contrary to Law)

80. Plaintiff incorporates the foregoing paragraphs by reference.

81. Colorado Constitution, Article 18, § 12(b), COLO. REV. STAT. §§ 33-6-201, *et seq.*, and 2 CODE COLO. REGS. §§ 406-0, *et seq.* ban all taking of wildlife by snare except under certain circumstances, including for the purposes of bona fide scientific research.

82. The Plans allow trapping of wildlife by snare, but do not meet the bona fide scientific research exemption, or any other exemption.

83. CPW's and the Commission's actions are thus unconstitutional and in violation of statutory authority and regulations, and this Court can declare CPW's and the Commission's actions illegal under C.R.C.P. Rule 57 and enjoin implementation of the Plans under C.R.C.P. Rule 65.

VIII. THIRD CLAIM FOR RELIEF

(Violation of Colorado APA, COLO. REV. STAT. § 24-4-106 – Plans in Violation of CPW’s and the Commission’s Fundamental Responsibilities)

84. Plaintiff incorporates the foregoing paragraphs by reference.

85. CPW and the Commission are required to preserve and maintain adequate populations of wildlife in the State, and the Commission can only approve bear and mountain lion killings where it determines that they are “necessary.”

86. The Plans do not provide adequate consideration of whether they will preserve adequate local populations of bears and mountain lions and CPW, and by extension the Commission, lacks the data to make such a determination.

87. In addition, the Commission deferred determination of whether killing bears and mountain lions as part of the Plans is necessary until after it had already exercised its authority and allowed the killings to move forward.

88. CPW’s and the Commission’s actions are thus in violation of statutory authority and the Commission’s policies under COLO. REV. STAT. § 24-4-106. This Court can declare CPW’s and the Commission’s actions unlawful under the APA and enjoin implementation of the Plans.

IX. FOURTH CLAIM FOR RELIEF

(Request for Declaratory Judgment Pursuant to C.R.C.P. Rule 57 – Plans in Violation of CPW’s and the Commission’s Fundamental Responsibilities)

89. Plaintiff incorporates the foregoing paragraphs by reference.

90. CPW and the Commission are required to preserve and maintain adequate populations of wildlife in the State, and the Commission can only approve bear and mountain lion killings where it determines that they are “necessary.”

91. The Plans do not provide adequate consideration of whether they will preserve adequate local populations of bears and mountain lions and CPW, and by extension the Commission, lacks the data to make such a determination.

92. In addition, the Commission deferred determination of whether killing bears and mountain lions as part of the Plans is necessary until after it had already exercised its authority and allowed the killings to move forward.

93. CPW’s and the Commission’s actions are thus in violation of statutory authority and

the Commission's policies, and this Court can declare CPW's and the Commission's actions illegal under C.R.C.P. Rule 57 and enjoin implementation of the Plans under C.R.C.P. Rule 65.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court to:

1. Declare unconstitutional and unlawful, set aside, and enjoin the Piceance Basin Predator Management Plan and the Upper Arkansas River Predator Management Plan pursuant to COLO. REV. STAT. § 24-4-106 and C.R.C.P. Rules 57 and 65;
2. Grant Plaintiff such other relief as the Court may deem just and proper.

Respectfully submitted this 18th day of January, 2017.

/s/ Stuart Wilcox
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