

December 6, 2024

Honourable Randene Neill  
Minister of Water, Lands and Resource Stewardship  
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EMAIL: WLRS.MINISTER@GOV.BC.CA

Dear Honourable Minister Neill:

This letter is written on behalf of the Colorado Conservation Alliance, Inc. (“CCA”). The CCA is a Colorado nonprofit corporation dedicated to protecting Colorado’s outdoor heritage and wildlife habitats through responsible, science-based wildlife management. The CCA is extremely concerned about one of the most significant environmental issues currently facing the State of Colorado: the introduction of the gray wolf. We understand that British Columbia has agreed to provide wolves to Colorado this winter.<sup>1</sup> We are asking British Columbia to put a pause on providing wolves to Colorado.

We understand that wolves hold a special, spiritual connection to First Nations in British Columbia – they are considered relatives, revered as sacred. In accordance with Article 29(1) of the United Nations Declaration on the Rights of Indigenous Peoples, we believe First Nations in British Columbia may also be very concerned with their wolves being exported to Colorado. Given the role of wolves in Indigenous identities, cultures and spirituality and British Columbia’s commitments under the Declaration on the Rights of Indigenous Peoples Act, SBC 2019 c. 44, we believe British Columbia has a legal and moral duty to consult deeply with the applicable First Nations on this matter. Please advise us to what extent British Columbia has carried out this legal obligation.

As you are aware, Colorado’s gray wolf introduction effort stems from the passage of “Proposition 114,” codified as section 33-2-105.8 of Colorado’s Revised Statutes, which requires the Colorado Parks and Wildlife Commission (“CPW”) to “[d]evelop a plan to restore and manage gray wolves in Colorado.” The statute mandates CPW to take the necessary steps to begin the introduction of gray wolves in the state by December 31, 2023.

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<sup>1</sup> <https://cpw.state.co.us/news/09132024/colorado-parks-and-wildlife-secures-source-population-gray-wolves-its-second-year>.

CPW Director Jeff Davis states in his article, the plan is to “capture and transport” 10 to 15 wolves from British Columbia to Colorado between December 2024 and March 2025. It is also our understanding that CPW’s motivation for requesting wolves from British Columbia is, at least partially, because states and tribes in America are concerned with the legality of providing wolves to Colorado.

CPW previously had an agreement with the Confederation Tribes of the Colville Reservation in Washington State to bring additional non-native gray wolves to Colorado, but the Colville Tribes informed CPW Director Davis that they rescinded that authorization because “necessary and meaningful consultation was not completed with the potentially impacted tribes.”<sup>2</sup> We agree that Colorado’s process for introducing wolves into the state is legally improper.

In December 2023, the CCA commenced a lawsuit against the U.S. Fish and Wildlife Service (“USFWS”), Colorado Parks and Wildlife Commission and the Colorado Division of Parks and Wildlife (collectively “CPW”), the Department of Natural Resources Executive Director Dan Gibbs, and CPW Director Jeff Davis, alleging the introduction of wolves violates the Endangered Species Act (“ESA”) and the National Environmental Policy Act (“NEPA”). This litigation is currently at the summary judgment stage.

For background on the lawsuit—Colorado requested the USFWS to designate the proposed Colorado gray wolf population as a “nonessential, experimental” population under Section 10(j) of the ESA, 16 U.S.C. § 1539(j), following the approval of Proposition 114. Gray wolves are currently listed as endangered in the United States outside of the Northern Rocky Mountain and Minnesota populations. Without a 10(j) Rule, any wolves in Colorado are an endangered species under the ESA. As a result of the request from CPW, USFWS began preparing an Environmental Impact Statement (“EIS”) under the National Environmental Policy Act (“NEPA”) for the proposed 10(j) rule because it is a “major federal action” requiring review under NEPA. CPW approved its final “Colorado Wolf Restoration and Management Plan” on May 3, 2023. USFWS released its final EIS on September 15, 2023. USFWS further published its final Record of Decision in the Federal Register on November 8, 2023, and the 10(j) rule went into effect on December 8, 2023. This process, however, has been and is currently deficient under law.

As asserted in CCA’s lawsuit against USFWS and CPW, the EIS, and therefore the 10(j) rule, violate NEPA because they do not contain any environmental analysis on the introduction of wolves itself. The EIS presumes the introduction will happen. NEPA requires agencies to take a “hard look” at environmental consequences before taking a major federal action that will impact the environment. *See e.g. Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350-51

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<sup>2</sup> <https://www.the-journal.com/articles/15-wolves-arent-coming-to-colorado-after-southern-ute-tribes-concerns-go-unresolved/>.

(1989). That simply did not happen here. The USFWS predetermined the NEPA analysis by committing itself to an outcome, thereby failing to take a hard, objective look at the environmental consequences of the action at issue. *See Wyoming v. U.S. Dept. of Agriculture*, 661 F.3d 1209, 1264 (10th Cir. 2011). The EIS is additionally deficient because it largely overlooked and did not adequately analyze the impact introducing gray wolves will have on other animal populations (notably, the endangered Mexican gray wolf), wolf-human and wolf-livestock conflicts, economic ramifications, canine diseases like *Echinococcus* that can be extremely harmful to humans, pets, ungulates and livestock, and overall impact on the surrounding environment.

Please note that we assume CPW may inform you that it does not need approval from USFWS to introduce wolves in Colorado because of Judge Rodriguez's preliminary ruling that the state's introduction of wolves is not a major federal action and is permissible under its Section 6 Cooperative Agreement with USFWS. This lawsuit is ongoing, however. CCA fully intends to appeal the Court's ruling on this issue because management and cooperative agreements under Section 6 of the ESA are simply designed to allow states to obtain federal assistance in conserving listed resident species within the state. *See* 16 U.S.C. § 1535(c), (A)-(E). They do not apply to introduction of a species that does not have a resident population in the specific state. These cooperative agreements in no way operate as an invitation for states to transport non-residents species across jurisdictions into areas where they are considered endangered in violation of the ESA.

The ESA prohibits the "taking" of any species that is threatened or endangered in the United States, including importing, possessing, selling, delivering, carrying, transporting, shipping, or taking such species. 16 U.S.C. § 1538(a)(1). The ESA defines the term "take" to mean "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." 16 U.S.C. § 1532(a)(1). Accordingly, assisting CPW in capturing, importing and transporting wolves in or through areas where gray wolves are considered threatened or endangered constitutes an impermissible "take" in violation of the ESA.

In sum, the EIS prepared by USFWS is significantly deficient under the requirements of NEPA. A fully compliant EIS is required before any possible introduction in this case because introduction constitutes a "major federal action." Colorado's Section 6 Cooperative Agreement with USFWS does not authorize CPW to transport non-resident gray wolves across jurisdictions into areas where they are considered endangered. Doing so violates the ESA's prohibition on take of protected species. We therefore strongly advise the British Columbia Ministry of Water, Lands and Resource Management to not provide gray wolves to Colorado or assist the state in its improper gray wolf introduction effort.

Please be aware that we are prepared to take legal action against you pursuant to the citizen suit provision of the ESA, 16 U.S.C. § 1540(g), if British Columbia does assist Colorado in capturing, importing and/or transporting gray wolves into an area of the United States where they are

December 6, 2024

Page 4 of 4

federally protected. We would prefer not to resort to such action, but we are ready to do what is necessary to ensure that all applicable procedures are correctly and properly followed under law before any possible introduction of gray wolves occurs.

Please contact us if you have any questions or would like to discuss this matter further. If the Ministry of Water, Lands and Resource Management is represented by an attorney, please let us know and we will direct all further communications accordingly. Thank you.

Sincerely,

  
Gary Leistico (Dec 6, 2024 15:26 CST)

Gary R. Leistico, Attorney

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