

Memorandum of Agreement
between the U.S. Fish and Wildlife Service and Colorado Parks and Wildlife
For Management of Gray Wolves in Colorado
and
Designation of Colorado Parks and Wildlife as a Designated Agent
of the U.S. Fish and Wildlife Service

This Memorandum of Agreement (MOA) between the U.S. Fish and Wildlife Service (Service) and Colorado Parks and Wildlife (CPW) is entered into in order to facilitate and enable active participation in wolf conservation and management by CPW personnel while gray wolves are federally listed. This MOA sets forth roles and responsibilities between the Service and CPW for the conservation and management of gray wolves in Colorado and serves as authorization to allow CPW to act as a designated agent of the Service in the conservation and management of the nonessential experimental population of the gray wolf (*Canis lupus*) in Colorado, and to implement a long-term, scientifically-based program to contribute toward the conservation of the species at the state level, in accordance with the Colorado Wolf Restoration and Management Plan (Plan).

Signatories

The Signatories to this MOA have regulatory jurisdiction and management authority over gray wolves and/or expertise in resolving conflicts between humans and gray wolves. The authorities for this MOA include, but are not limited to, the following:

- 1) C.R.S. 33-1-105(1)(e), which authorizes Colorado Division of Parks and Wildlife and the Colorado Parks and Wildlife Commission (together, CPW) to enter into cooperative agreements for the development and promotion of wildlife programs;
- 2) C.R.S. 33-2-105.8(2)(e), which authorizes CPW to oversee gray wolf reintroduction and management in Colorado;
- 3) 2 Colo. Code Regs. § 406-10:1001.A(1), which authorizes CPW and the Service and their agents to capture and relocate gray wolves in Colorado;
- 4) Section 6 of the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*), which authorizes the Service to enter into cooperative agreements with States that establish and maintain adequate and active programs for the conservation of endangered and threatened species, and a Cooperative Agreement executed in 1976 by CPW and the Service pursuant to that authority; and
- 5) Section 10 of the ESA, which provides that the Secretary of the Interior may authorize the release of an endangered species or a threatened species as an experimental population.

Introduction

WHEREAS, the ESA declared the policy of Congress to be that “Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act”;

WHEREAS, gray wolves within the State of Colorado are federally listed as endangered, and the Service is responsible for implementing the ESA and has primary oversight over the conservation and management of federally listed species;

WHEREAS, the Service published the Regulations for the Establishment of a Nonessential Experimental Population of the Gray Wolf (*Canis lupus*) in Colorado (November 8, 2023; 88 FR 77014) (hereafter “Colorado gray wolf 10(j) rule”);

WHEREAS, the gray wolf is a state endangered species in Colorado, and CPW would have oversight over the conservation and management of the species if gray wolves were removed from the federal list of threatened and endangered species;

WHEREAS, the CPW Commission approved the Plan in May 2023 which describes the methods to restore and manage wolves in Colorado;

WHEREAS, the Colorado gray wolf 10(j) rule provides that the State of Colorado, or any Tribe within the State, may request an MOA from the Service to take over lead management responsibility and authority to implement the rule by managing the nonessential experimental population of gray wolves in the State or on a Tribal reservation, and implement all parts of their State or Tribal plan that are consistent with the rule, provided that the State or Tribe has a wolf management plan approved by the Service;

WHEREAS, the Service was an active member of the Technical Working Group and, upon request, participated in Stakeholder Advisory Group meetings, both of which provided recommendations to CPW to inform Plan development; reviewed the draft Plan; and has coordinated with CPW to implement the final Plan consistent with federal rules and regulations;

WHEREAS, the Service hereby approves the State’s Plan;

WHEREAS, the State of Colorado has demonstrated: (a) that it has authority and management capability to conserve gray wolves throughout the State; (b) that it has an acceptable conservation program for gray wolves and the requisite authority and capacity to carry out the conservation program; (c) which parts of the Plan it intends to implement in the experimental population area; and (d) that it will report management progress to the Service on at least an annual basis;

WHEREAS, the Service finds that management of gray wolves by the State pursuant to the Colorado gray wolf 10(j) rule is not likely to jeopardize the continued existence of listed gray wolves;

NOW THEREFORE, the Signatories enter into this MOA to accomplish its purpose and objectives as stated below:

Purpose

The primary purpose of this MOA is to establish CPW as a designated agent of the Service pursuant to the Colorado gray wolf 10(j) rule (November 8, 2023; 88 FR 77038-77039) and define the respective roles and responsibilities of the Service and CPW for the conservation and management of gray wolves while they are federally listed and managed within the State of Colorado as a nonessential experimental population.

This MOA implements the Colorado wolf 10(j) rule. The Service authorized the State of Colorado, through CPW, to release and establish gray wolves in Colorado as an experimental population under section 10(j), subject to Service oversight, in accordance with the Colorado gray wolf 10(j) rule. CPW will assume lead management responsibility and authority for wolf conservation and management within the borders of the nonessential experimental population area for gray wolves in Colorado (an area coterminous with the borders of the State), with the exception of tribal lands within the Southern Ute Indian Tribe or Ute Mountain Ute Tribe reservation boundaries. This MOA authorizes CPW to implement the Plan in a manner consistent with the Colorado gray wolf 10(j) rule. Designated agent status under the Colorado gray wolf 10(j) rule authorizes any CPW staff member to implement provisions of the Plan in accordance with the Colorado gray wolf 10(j) rule. The statewide distribution of CPW personnel and their familiarity with local conditions will allow them to effectively conserve and monitor wolves in Colorado and to minimize and mitigate wolf-related conflicts. This MOA does not authorize CPW staff or their agents to implement the Colorado gray wolf 10(j) rule on tribal lands within the Southern Ute or Ute Mountain Ute reservation boundaries.

Objectives

The objectives of this MOA are as follows:

- 1) Manage gray wolves within Colorado consistent with federal and state regulations and policy, including the Colorado gray wolf 10(j) rule and the Plan, to further the conservation of listed gray wolves;
- 2) Facilitate a consistent and collaborative approach to gray wolf conservation and management while gray wolves in Colorado are on the federal list of threatened and endangered species;
- 3) Ensure that gray wolf conservation within Colorado is integrated with management programs that minimize and/or mitigate conflict risk;
- 4) Foster cooperation that improves the science-based foundation for gray wolf conservation by conducting and/or facilitating research necessary to manage the experimental population consistent with the Colorado wolf 10(j) rule;
- 5) Share timely information, as appropriate and necessary, with partners and stakeholders (including the public) regarding the Colorado Gray Wolf Restoration Program to foster

transparent and effective communications regarding the goals and commitments under this MOA; and

- 6) Ensure a straightforward transition to State-led conservation and management if gray wolves in Colorado are removed from the federal list of threatened and endangered species.

Collaborative Roles and Responsibilities of the Signatories to this MOA:

1) CPW will:

- a) Implement the Plan to the extent permitted by state and Federal regulations and policy on all lands within Colorado, excluding tribal lands within reservation boundaries.
- b) Act as a designated agent of the Service in Colorado and, subject to Service oversight and coordination, assume lead management responsibility and authority on wolf conservation and management in the State of Colorado to the extent permitted by appropriate Federal regulations while the species is federally listed to:
 - i) Monitor the Colorado gray wolf population, using a combination of surveys, capture, and radio telemetry, and non-invasive monitoring and survey techniques;
 - ii) Conduct, coordinate, and facilitate research involving gray wolves and issue written authorization for such research as appropriate;
 - iii) Conduct public outreach and provide information about gray wolves and gray wolf management in Colorado;
 - iv) Implement proactive strategies and conduct or direct non-lethal and lethal control actions to reduce and/or resolve gray wolf-livestock conflicts and human safety concerns;
 - v) Direct the field work of the U.S. Department of Agriculture Wildlife Services when non-lethal or lethal control of gray wolves is warranted as long as such decisions are within the guidelines established by the Colorado wolf 10j rule, as applicable;
 - vi) Provide written authorization to private citizens to take gray wolves in Colorado in accordance with the 10(j) Rule and state statutes and regulations, including for intentional harassment and depredation permits where warranted;
 - vii) Take possession of and dispose of gray wolf parts/specimens (e.g., hide, skulls) in accordance with the Plan, including as appropriate for scientific and educational purposes after consultation and concurrence from Service law enforcement agents.
- c) Provide administrative support and adequate staffing, including any CPW volunteers, to carry out these duties.
- d) Communicate regularly (at a minimum, quarterly) with the Service's Wolf Coordinator or appropriate Service representative.
- e) Assist the Service by providing data as needed to allow the Service to carry out its responsibilities under the ESA and to facilitate coordination of management responses to wolf conflicts in Colorado and when gray wolves disperse outside of the State (except on tribal lands within reservation boundaries).

- f) Submit to the Service an annual report on the status of the nonessential experimental population of wolves in Colorado as described in the Colorado gray wolf 10(j) rule (88 FR 77039).
 - g) Assist Service law enforcement upon request to further investigations of potential take of federally listed species as described in the *Memorandum of Agreement for Cooperative Law Enforcement Between the U.S. Fish and Wildlife Service and the Colorado Division of Parks and Wildlife* (dated May 30, 2019).
 - h) Lead law enforcement efforts involving Colorado state laws.
- 2) The Service will:
- a) Ensure that the State's management of gray wolves, as a federally listed species, is conducted in full compliance with the Colorado wolf 10(j) rule by providing program oversight, and coordinating and collaborating with CPW on gray wolf monitoring and management, non-lethal and lethal conflict mitigation, and overall management on lands in Colorado, except on tribal lands within the Southern Ute and Ute Mountain Ute reservation boundaries.
 - b) Develop and propose revisions to the Colorado wolf 10(j) rule, through a proposed rulemaking as appropriate.
 - c) Lead the development of appropriate National Environmental Policy Act documents for any proposed revisions to the 10(j) rule.
 - d) Provide any necessary Service authorizations and permits to CPW on a timely basis, if required under applicable laws.
 - e) Be responsible for all wolf-related ESA section 7 consultation throughout Colorado.
 - f) Lead law enforcement investigations of all federally listed species and direct activities of CPW law enforcement staff upon request as described in the *Memorandum of Agreement for Cooperative Law Enforcement Between the U.S. Fish and Wildlife Service and the Colorado Division of Parks and Wildlife* (dated May 30, 2019).
 - g) Issue written gray wolf take authorizations for private citizens on Tribal reservations when appropriate.

It is Mutually Agreed and Understood by and between the Signatories to this MOA that:

- 1) The Signatories have agreed through this MOA to collaborate in managing gray wolves in Colorado under the provisions of the Colorado wolf 10(j) rule, the Plan, and relevant implementing state and federal regulations. Collaboration pursuant to this MOA shall not abrogate, nor shall it be construed to abrogate, the jurisdictional or other legal authorities of either Signatory or of any other entity, including state authorities for wildlife and wildlife management. All responsibilities, obligations, authorities, liabilities, and discretion granted by applicable law to each of the Signatories shall be maintained.
- 2) Certain discussions or documents provided to the MOA Signatories or their designees will contain information on the Colorado Wolf Restoration Program that is confidential, but is provided to signatories for deliberative and advisory purposes. Signatories to this MOA acknowledge the confidential nature of this information and that it is not intended for distribution to or discussion with non-parties to the MOA. The Signatories agree to maintain the confidentiality of the information they receive, to the extent permitted by law (e.g.,

Freedom of Information Act, (5 U.S.C. 552 (FOIA), or state open records law), and to limit its distribution or discussion to their organizational leadership, as required and appropriate, on a strictly need-to-know basis.

- 3) The terms of this MOA are contingent upon sufficient resources being available to the Signatories for performance of this MOA, and nothing in this MOA commits a party to the expenditure of funds that are not appropriated or allocated. Decisions as to whether sufficient resources are available shall be determined by each Signatory, shall be accepted by the other Signatory, and shall be final.
- 4) The terms of this MOA will be effective for five years, unless extended or terminated. At that time, a re-evaluation will be conducted by both parties whereupon the agreement may be extended. Either party may terminate the agreement with a 60-calendar-day written notice to the other party.
- 5) This MOA will remain in effect while gray wolves in Colorado are a federally listed species. If gray wolves in Colorado are removed from the federal list of threatened and endangered species, this MOA will be dissolved.
- 6) Specific work projects or activities that involve transfer of funds, services, or property among the Signatories shall require execution of separate agreements or contracts and be contingent upon the availability of appropriated or other funds. Appropriate statutory authority must independently authorize such activities; this MOA does not provide such authority. Negotiation, execution, and administration of each such separate agreement or contract must comply with all applicable statutes and regulations. Nothing in this MOA shall obligate the Signatories to encumber or transfer any funds, expend appropriations, or enter into any contract or other obligations.
- 7) This MOA is not intended to, and does not create or establish, any substantive or procedural right, benefit, trust responsibility, claim, cause of action enforceable at law, or equity, in any administrative or judicial proceeding by a Signatory or non-party against any other Signatory or against any employee, officer, agent, or representative of any Signatory.
- 8) The Signatories to this MOA and their respective agencies and offices will handle their own activities and use their own resources, including the expenditure of their own funds, in pursuing the objectives of this MOA, except when transfers of funds are authorized by separate agreements or contracts. Employee assignment under this MOA is subject to approval by the employing agency.
- 9) Any information provided to any Federal Agencies under this instrument may be subject to release under FOIA. Nothing in this MOA shall be construed to affect the applicability of the exemptions set forth in 5 U.S.C. 552(b).
- 10) This MOA is not a federal contract, rule, or regulation.

- 11) This MOA is subject to all federal statutes relating to nondiscrimination. These include, but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352); and (b) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1683 and 1685-1686).
- 12) The provisions of any statutes and/or regulations cited in this MOA contain legally binding requirements. The MOA itself does not alter, expand, or substitute for those provisions or regulations, nor is it a regulation itself. Nothing in this MOA shall be interpreted as a commitment or requirement that the Signatories take action in contravention of federal or state law or regulations, including the ESA, the Administrative Procedure Act, or equivalent state laws.
- 13) Unless expressly provided by law, personnel, or volunteers of one Signatory shall not be considered to be employees of the other Signatory for any purpose, and no joint venture or principal-agent relationship shall be deemed to exist. The personnel and volunteers of one Signatory are not entitled to any of the benefits that the other Signatory provides for its employees or volunteers. This MOA shall not make, or be deemed to make, employees of one Signatory subject to supervision by employees of another Signatory.
- 14) On behalf of itself, its officers, directors, members, employees, agents, and representatives, each Signatory agrees that it will be responsible for its own acts and omissions and the results thereof and that it shall not be responsible for the acts or omissions of the other Signatory, nor the results thereof. Each Signatory therefore agrees that it will assume the risk and liability to itself, its agents, employees, and volunteers for any injury to or death of persons or loss or destruction of property resulting in any manner from the conduct of the Signatory's own operations and/or the operation of its agents, employees and/or volunteers under this MOA. Each Signatory further releases and waives all claims against the other Signatory for compensation for any loss, cost, damage, expense, personal injury, death, claim, or other liability arising out of the performance of this MOA, including without limitation any loss, cost, damage, expense, personal injury, death, claim or other liability arising out of the other Signatory's negligence, provided, however, that either Signatory may agree to voluntarily compensate the other for damage to equipment.

IN WITNESS WHEREOF:

The Signatories hereto have executed the MOA as of the last written date below.

Jeff Davis Digitally signed by Jeff Davis
Date: 2023.12.12 11:39:34
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12/12/23

Jeff Davis
Director,
Colorado Parks and Wildlife

Date

 Digitally signed
by LIISA NIVA

12/12/23

Liisa Niva
Acting Field Office Supervisor
Colorado Ecological Services Field Office
U.S. Fish and Wildlife Service

Date

Attachment:

Memorandum of Agreement for Cooperative Law Enforcement between the U.S. Fish and Wildlife Service and Colorado Division of Parks and Wildlife, signed 05/30/2019.