

MEMORANDUM OF AGREEMENT
for
Cooperative Law Enforcement
between the
U.S. Fish and Wildlife Service
and
Colorado Division of Parks and Wildlife

This Memorandum of Agreement is a cooperative agreement entered into under authority of the Fish and Wildlife Revenue Enhancement Act of 1998, 16 U.S.C. Section 742/ (b) and under authority of 16-2.5-116(2), C.R.S.-Special Wildlife Officer and 33-1-110(5), C.R.S.-Duties of the Director of the Colorado Division of Parks and Wildlife between the U.S. Fish and Wildlife Service Office of Law Enforcement, hereinafter "Service" and the Colorado Division of Parks and Wildlife, hereinafter "CPW".

Whereas, the Congress of the United States and the CPW have found that the protection and conservation of fish, wildlife, and other natural resources is in the best interest of the public and have enacted various laws to provide for the protection and conservation of wildlife and native plants.

Whereas, the United States Congress has given the Secretary of the Interior the authority to enforce certain laws dealing with the protection and conservation of fish, wildlife, and other natural resources and this authority has been delegated to the Director of the Service and to certain qualified individuals.

Whereas, the State of Colorado has given the CPW the authority to enforce certain laws dealing with the protection of wildlife and other natural resources and this authority has been delegated to the Director of the CPW and to certain qualified individuals.

Whereas, the Service and the CPW recognize that mutual benefits will accrue to the law enforcement efforts of each by entering into a Memorandum of Agreement to share law enforcement expertise, training, intelligence information, specialized equipment, funding, and facilities, and to designate law enforcement officers to efficiently enforce all laws administered by the Service and the CPW relating to fish, wildlife, and other natural resources.

Whereas, the Service has determined that it is necessary and appropriate to utilize certain officers, services, and facilities of the CPW to assist in providing effective enforcement of Federal and CPW laws on the lands and waters within the jurisdiction of CPW.

Whereas, the CPW has determined that it is necessary and appropriate to utilize certain

officers, services, and facilities of the Service to assist in providing effective enforcement of Federal and CPW laws on the lands and waters within the jurisdiction of CPW.

Therefore, the parties agree that:

A. Delegation of Federal Authority

(1) The Assistant Director Office of Law Enforcement hereby delegates to the CPW the authority to enforce the following Federal laws dealing with the protection and conservation of fish, wildlife, and natural resources of the United States and regulations that are issued pursuant thereto and are within the limitations of and subject to the jurisdiction of the laws of the United States, and occurring within the State of Colorado.

African Elephant Conservation Act (16 U.S.C. §§ 4201-4246)

Airborne Hunting Act (16 U.S.C. § 742j-1)

Antarctic Conservation Act of 1978 (16 U.S.C. § 2401; § 2412)

Archaeological Resources Protection Act (16 U.S.C. §§ 470aa-11)

Bald and Golden Eagle Protection Act (16 U.S.C. §§ 668-668d)

Endangered Species Act (16 U.S.C. §§ 1531-1544)

Fish and Wildlife Recreation Act (16 U.S.C. §§ 460k-460k-4)

Lacey Act and Lacey Act Amendments of 1981 (18 U.S.C. §42, 16 U.S.C. §§ 3371 - 3378)

Marine Mammal Protection Act (16 U.S.C. §§ 1361-1384, 1401-1407)

Migratory Bird Hunting and Conservation Stamp Act (16 U.S.C. §§ 718-718k)

Migratory Bird Treaty Act (16 U.S.C. §§ 703-712)

National Wildlife Refuge System Administration Act (16 U.S.C. §§ 668dd-668ee)

Recreational Hunting Safety Act of 1994 (16 U.S.C. §§ 5201-5207)

Rhinoceros and Tiger Conservation Act (16 U.S.C. §§ 5301-5306)

Wild Bird Conservation Act (16 U.S.C. §§ 4901-4916)

This Agreement does not delegate authority to enforce the import and/or export provisions of the statutes above unless the designee is accompanied by or under the direct supervision of a Service Special Agent or Wildlife Inspector.

(2) The Assistant Director, Office of Law Enforcement specifically delegates to the CPW the same authority to search, seize, arrest, and exercise other law enforcement functions under the laws specified in paragraph A(1) of this Agreement as if the CPW were employed by the Department of the Interior and authorized by the Secretary of the Interior to enforce those laws.

(3) This Agreement between the Service and the CPW may not be used to delegate Federal law enforcement authority to any person convicted of a misdemeanor crime of domestic violence or otherwise prohibited from possessing firearms, within the meaning of 18 U.S.C. § 922 (g).

B. Re-delegation of Federal Authority to CPW

(1) The CPW may designate individuals to exercise the authority to enforce the conservation laws and regulations of the United States as specified above. This designation may only be to a person who meets all the following criteria:

(a) The officer is employed as a full-time law enforcement of the CPW

- (i) whose principal law enforcement duty is the enforcement of conservation laws and regulations, native plant protection laws and regulations, other federal laws,
- (ii) and who has successfully completed all the required CPW law enforcement training to meet full certification as a CPW law enforcement officer,
- (iii) and has successfully completed a probationary period (minimum of 1 year),
- (iv) and, is an officer in good standing with the CPW, e.g. no adverse employment actions pending or sustained.

(b) The officer must be proficient in the use of firearms and other weapons as demonstrated by meeting the firearms qualification, re-qualification, and other training standards required by the CPW. The officer will only utilize the firearms and weapons he or she is authorized to carry and use according to the firearms and weapons policies of CPW.

- (c) The officer agrees to follow the Service's Use of Force policy when acting under this Agreement. The Service recognizes that the officer may be authorized to carry and use a chemical spray, conducted electrical weapon and/or impact weapon that differ from the weapons authorized by the Service. In these situations, the officer can continue to carry and use the chemical spray, conducted electrical weapon and/or impact weapon that is authorized by the CPW, but the officer must adhere to the levels of control/force for the use of these weapons as outlined in the Service's Use of Force policy. The Service's Use of Force policy is attached and will be transmitted to the CPW to all officers so delegated under this Agreement.

(2) The CPW shall notify the Service of the full name, address and date of birth of each designee. This designation shall become effective upon the filing of such information with the Service; such delegation of authority shall not constitute a commission or office within the meaning of the laws of the CPW. The Assistant Chief of Law Enforcement and Public Safety for the CPW shall issue to each designee a copy of this Agreement and the Service's Use of Force and Firearms policies.

- (a) If at any time, any person designated to exercise authority under this Agreement fails to meet any of the criteria set forth in paragraph B (1), the CPW shall not approve or shall immediately terminate the designation when the CPW becomes aware of such failure and shall immediately notify the Service.
- (b) Information about the addition or deletion of designated officers should be provided to the Service within 30 days.
- (c) The CPW will provide a complete up-to-date list of officers holding authority under this Agreement to the Service by January 15 of each year.

(3) Officers of the CPW who have been delegated authority under this Agreement may only exercise such authority within the normal jurisdiction of the CPW, except as provided for in 3(a), (b), and (c) below.

- (a) An officer of the CPW may exercise such authority anywhere within the jurisdiction of the United States when accompanied by a Service officer or when under the direct supervision of Office of Law Enforcement (OLE) Resident Agent in Charge (RAC).
- (b) Officers of CPW may exercise such authority outside of their normal jurisdictions. However, they must obtain approval from the OLE RAC when not under the direct supervision of a Service Special Agent, before proceeding with the arrest or other actions outside of their jurisdiction unless exigent circumstances exist requiring immediate action to protect life or property, prevent the imminent loss of evidence, or prevent the escape of a person in violation of one or more statutes for which authority is conveyed under section A(1) of this agreement. Should action be taken

under this section, the OLE RAC must be immediately notified as is reasonably practicable to do so.

- (c) This Agreement does not include authority to enforce conservation laws and regulations of the United States on Federal tribal lands unless such authority is already conferred by an existing law or agreement. However, an officer of the CPW may exercise such authority on tribal lands, when accompanied by and under the direct supervision of a Service Special Agent.

(4) An employee of CPW who has been delegated authority under this Agreement must comply with Public Law 103-272, 49 U.S.C. 46505(b) and the pertinent regulations (49 CFR 1544.219) regarding carrying firearms on commercial aircraft. Prior to carrying a firearm on a commercial aircraft, officers of the CPW must follow the policies of the CPW as well as follow the requirements of the regulations issued by the United States Department of Homeland Security.

(5) The Service may, by written notice to the CPW, terminate any designation made by the CPW.

(6) The CPW and officers to whom the Service has designated authority under this Agreement shall, while acting under this Agreement, agree that:

- (a) The designees are not to be deemed Federal employees by virtue of their designation and shall not be subject to Federal law relating to hours of work, competitive examination, rates of compensation, and Federal employee benefits, except those individuals who already qualify as Federal employees under their current position.
- (b) The CPW shall continue to provide compensation under the current CPW coverage for work-related injuries while the designees are acting under this Agreement. Designated individuals may be considered eligible for compensation under subchapter III of chapter 81 of Title 5, if activities are initiated and approved by the Service.
- (c) While performing duties under this Agreement, the designees shall be considered investigative or law enforcement officers of the United States for the purposes of the tort claim provisions of 28 U.S.C. and 5 U.S.C. 8401(17).
- (d) While performing duties under this Agreement, the designees shall be considered officers or employees of the Department of the Interior within the meaning of 18 U.S.C. sections 111 and 1114.

(7) The CPW must recall and cancel any designation of authority upon termination of employment or reassignment of the officer concerned to non-law enforcement duties or upon notice that the person no longer meets all of the criteria for issuance of such authority. Notice

of such recall or cancellation shall immediately be given to the Service in writing.

C. Delegation of CPW Authority to Service Law Enforcement

(1) The Service has the authority to assist in CPW State wildlife law enforcement. Service Law Enforcement Officers are authorized to accept commissions to enforce State conservation laws provided by the State under their authority and under authority of 16 U.S.C. 661 and 742f (a)(4).

(2) The CPW delegates the authority to enforce all State laws and regulations administered by the State dealing with protection and conservation of wildlife and natural resources as outlined in Law Enforcement Operating Procedure (LEOP) 1300.4 (see attached) to all Service Law Enforcement Officers designated by the Assistant Director, Office of Law Enforcement. Such delegation of State authority shall be in accordance with specific State law.

(3) The Service will provide the CPW an annual list, including the full name, address and date of birth, by January 15 of all personnel deemed to be qualified as law enforcement officers within the meaning of this Agreement, and shall promptly notify the CPW of any terminations, changes in duty station, or transfers by any person possessing delegations of authority under this Agreement. The Service will advise the CPW of any personnel to be added to, or removed from, the list during the year in writing.

(4) The Service will not initiate any investigation, either overtly or covertly, into activities that are solely violations of the laws of the CPW that are subject to this Agreement without the concurrence of the CPW.

(5) The Service will submit in a timely manner appropriate investigative or other reports to the CPW on law enforcement activities conducted under authority of this Agreement. The Service will not refer any violations of solely State laws to State prosecuting attorneys without the concurrence of the CPW.

(6) Only the CPW will act as liaison and conduct case handling and referral to State prosecutors and courts.

(7) The Service will confer with the CPW concerning procedures for reporting and prosecuting violations of State conservation laws. Such procedures shall become effective and binding upon the Service and its employees when acting under the authority of this Agreement.

(8) The interpretations, policies and law enforcement procedures of the CPW will be followed by Service Law Enforcement Officers when exercising State enforcement authority under this Agreement.

(9) Either the Service or the CPW may, by written notice, terminate any designation made by the Service.

(10) Service Law Enforcement Officers are not to be deemed State employees and are not subject to State law relating to hours of work, competitive examination, rates of compensation, and State employee benefits. The Service will continue to provide compensation under Federal law for work-related injuries while Service Law Enforcement Officers are acting under this Agreement.

D. Procedures for Investigating Federal Offenses

The following procedures shall govern any investigations or prosecutions of Federal offenses under this Agreement:

(1) Officers of the CPW who are delegated authority under this Agreement may take necessary enforcement actions for violations of the Federal laws that are subject to this Agreement that occur in their presence or view. Where illegal activities may constitute violations of both the laws of the CPW and laws enforced by the Service, the CPW will determine, in consultation with the Service, whether to investigate and/or prosecute under applicable CPW law.

The CPW will refer appropriate violations of the Federal laws listed in A(1) or their accompanying regulations for which they decide not to prosecute under their law to the Service.

(2) The CPW will not initiate any investigation, either overtly or covertly, into activities that are solely violations of Federal laws identified in section A(1) without the concurrence of the Service.

(3) All potential investigations that may result in a felony prosecution for violations of any of the Federal laws identified in section A(1) must be coordinated with the Service. All investigations involving potential Federal charges against any person who may claim Native American rights must be coordinated with the Service.

(4) The CPW will submit in a timely manner appropriate investigative or other reports to the Service on law enforcement activities conducted under authority of this Agreement to the Special Agent in Charge.

(5) Referral for Federal prosecution of any violation of the laws identified in section A(1) may not occur without prior approval of the Service. Only a Service Special Agent shall act in liaison and conduct case handling and referral to Federal prosecutors and the Federal courts.

(6) Referral for Federal prosecution of any violation of the laws identified in section A(1) on Service lands may not occur without prior approval of the Service.

(7) Service law enforcement policies, as well as the Federal Rules of Criminal Procedure, will be followed by the CPW law enforcement officers when enforcing Federal laws and their

accompanying regulations identified in A(1).

E. Coordination

The Special Agent in Charge, Office of Law Enforcement, in Lakewood, Colorado, or his/her designee and the Assistant Director of Law Enforcement and Public Safety of the CPW, or his/her designee, shall confer within 45 days after the signing of this Agreement, and as necessary, for the purpose of:

- (1) Identifying enforcement problems in areas of concurrent jurisdiction that may require joint enforcement operations or investigations
- (2) Identifying enforcement problems that may require covert investigation
- (3) Identifying the need for specialized law enforcement equipment
- (4) Discussing new techniques and methods for the detection and apprehension of violators of conservation laws and the exchange of law enforcement information in general; and
- (5) Reviewing training programs and identifying the need for additional instruction in CPW and/or Federal laws, policies, interpretations, or other appropriate subjects.

F. Cooperative Agreements

The Service and the CPW may enter into an investigation specific cooperative agreements detailing operational aspects and the sharing of resources between the parties, including, but not limited to: funding, personnel, equipment, intelligence, investigative reports, prosecution of cases, media releases, handling and care of evidence, and disposition of assets.

G. Actions to be taken by the Parties

- (1) The Service will provide to the CPW, subject to available resources and manpower, copies of Federal laws and regulations and pertinent Service policy and interpretations and the assistance of special agents and the use of equipment for specific, high-priority enforcement operations.
- (2) The Service and the CPW will jointly confer with designees to ensure they understand the elements of this Agreement and responsibilities of accepting conferral of authority to enforce CPW and federal laws and regulations.
- (3) The CPW will provide to the Service, subject to available resources and manpower, copies of State laws and regulations and pertinent policies, law enforcement procedures and

interpretations, and the assistance of CPW officers, and the use of equipment for specific, high- priority enforcement operations.

(4) The CPW will make officers available, upon request by the appropriate Federal authority, to appear as witnesses in connection with any action brought with which they have an involvement.

(5) The Service may reimburse CPW officers who appear in Federal court for cases related to this Agreement for travel expenses and per diem at rates authorized by the Federal Travel Regulations for travel incurred while providing direct services to the Federal government as a witness, or for other related activities, in accordance with applicable Federal law.

H. Amendment, Effective Date and Termination

(1) This Agreement shall become effective on the date signed by both parties and filed with the CPW and the Service and shall continue in effect until terminated.

(2) The Agreement may only be revised or amended by consent of both parties. Such revisions or amendments shall not be effective until reduced to writing and signed by both parties.

(3) This Agreement may be terminated by either party upon giving thirty (30) days advance written notice.

I. Contacts and Designee

For the purpose of this Agreement, contact or coordination with the Service means contact or coordination with the Special Agent in Charge in the region where the Agreement has been signed and with the CPW in that region.

J. Third Party Claims

Nothing in this Agreement is intended to create any right, privilege, or benefit not otherwise recognized by law for persons, organizations, or entities not party to this Agreement.

K. Issue Resolution

Both parties agree to appoint their respective points of contact to work in good faith towards resolution of any issues or disputes that may arise, such as to the scope of this agreement or to the interpretation of its provisions. Disputes arising under or relating to this MOA shall be resolved only through consultations between the Parties. Such disputes shall not be referred to

any outside party or to any other settlement without the written consent of both Parties.

L. Severability

Nothing in this agreement is intended to conflict with current law, regulation, executive order, presidential directive, or the directives or policies of the Service or CPW. If a term of this agreement is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this agreement shall remain in full force and effect.

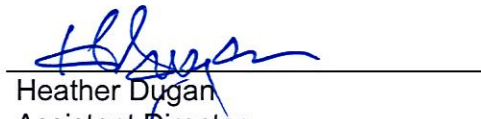
M. Delegation of State Authority

In accordance with Sections B and C of this Agreement, the parties delegate and accept above authority.



Edward Grace
Assistant Director,
Office of Law Enforcement
U.S. Fish and Wildlife Service

Date: 05.30.19



Heather Dugan
Assistant Director
Law Enforcement and Public Safety
Colorado Parks and Wildlife

Date: 05.30.19

STATE OF COLORADO
Jared Polis, Governor
The Department of Natural Resources,
The Parks and Wildlife Commission,
And Colorado Parks and Wildlife

Attachments:

U.S. Fish and Wildlife Service Use of Force Policy
U.S. Fish and Wildlife Service Firearms Policy
Colorado Division of Parks and Wildlife Law Enforcement Operating Procedure 1300