

## **APPENDIX B: RELATED LAWS AND POLICIES**

## **RELATED LAWS AND POLICIES**

The following sections describes the federal, state, and international laws, policies, and treaties that are relevant to the proposed action.

### **Endangered Species Act**

The Endangered Species Act (ESA), signed into law in 1973, recognizes the aesthetic, ecological, educational, historical, recreational, and scientific value of the nation's wildlife and plant species. The purpose of the ESA is to provide a means to conserve the ecosystems upon which endangered and threatened species depend and provide a program for the conservation of such species. The act directs the U.S. Fish and Wildlife Service (Service) and all federal agencies to participate in conserving threatened and endangered species.

Section 7(a)(2) of the ESA requires federal agencies to ensure their activities are not likely to jeopardize the continued existence of federally listed species or destroy or adversely modify designated critical habitat. Federal agencies, including the Service, must complete consultation under section 7 when any project or action they authorize, fund, or carry out may affect a listed species or designated critical habitat.

Section 10(j) of the ESA states that the Secretary of the Interior may designate a population of a listed species as experimental. An experimental population is a special designation for a group of plants or animals that will be reintroduced in an area that is geographically isolated from other populations of the species. With the experimental population designation, the specified population is treated as a threatened or candidate species under the ESA, regardless of the species' designation elsewhere in its range. This designation allows the Service the discretion to devise management programs and special regulations for an experimental population to ease the regulatory burden on landowners and managers associated with endangered species (USFWS 2018).

### **Animal Damage Control Act of 1931**

The Animal Damage Control Act of 1931 states, in part, "the Secretary...is authorized to conduct such investigations, experiments, and tests as he may deem necessary...on public domain, State,...and privately owned lands of...animals injurious to agriculture,...forestry,...wild game animals,...and for the protection of stock...and to conduct...control...of such animals...and may cooperate with States, individual and public and private agencies, organizations and institutions" (USFWS 1994). The act provides broad authority for investigation and control of injurious, or harmful, species of wildlife. Public Law 99-19, approved in 1985, transferred administration of the act from the Secretary of the Interior to the Secretary of Agriculture (USFWS n.d.). The U.S. Department of Agriculture's Animal and Plant Health Inspection Service Wildlife Services "[provides] Federal leadership and expertise [in resolving] wildlife conflicts to allow people and wildlife to coexist" (USDA-APHIS n.d.).

### **Wilderness Act of 1964**

The Wilderness Act of 1964 establishes the National Wilderness Preservation System and directs federal land management agencies to manage these wilderness areas to preserve wilderness character. Wilderness areas are managed by the Service, National Park Service, Bureau of Land Management, and U.S. Forest Service (NPS n.d.). The Wilderness Act defines wilderness as "an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed...to preserve its natural conditions and which:

1. Generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable,
2. Has outstanding opportunities for solitude or a primitive and unconfined type of recreation,
3. Has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition, and
4. May also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.”

### **National Environmental Policy Act of 1969**

The National Environmental Policy Act (NEPA) (42 United States Code [USC] 4321–4347) requires federal agencies to undertake an assessment of environmental effects of any proposed action prior to making a final decision and implementing it. NEPA requirements apply to any federal project, decision, or action that may have a significant impact on the quality of the human environment. NEPA also established the Council on Environmental Quality (CEQ), which issued regulations implementing the procedural provisions of NEPA (40 Code of Federal Regulations [CFR] parts 1500–1508). The Service has regulatory authority under the ESA to manage the conservation and recovery of listed species, including creating rules and regulations and permitting legitimate activities that would otherwise be prohibited by federal law. Promulgating a 10(j) rule for designation of an experimental population of a species is considered a major Federal action requiring review under NEPA.

### **National Historic Preservation Act of 1966**

Section 106 of the National Historic Preservation Act of 1966, as amended (16 USC 470 et seq.) and its implementing regulations under 36 CFR Part 800 require all federal agencies to consider effects of federal actions on historic properties, including historic structures, districts, cultural landscapes, and archaeological sites eligible for or listed in the National Register of Historic Places.

### **Executive Order 12898 – Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations**

Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, was issued by President Clinton in 1994. This executive order requires each federal agency to make environmental justice part of its mission. Agencies are required to identify and address disproportionately high adverse human health or environmental effects of their activities on minority populations and low-income populations. Minority populations are defined as individuals who are members of the following population groups: American Indian and Alaska Native, Asian, Native Hawaiian and Other Pacific Islander, Black, or African American, two or more races, or Hispanic. Low-income is defined as a median household income at or below the Department of Health and Human Services' poverty guidelines.

### **Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments**

Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*, was issued by President Clinton in 2000. The executive order recognizes Tribal rights of self-government and sovereignty and requires federal government agencies to work with Native American governments on a government-to-government basis. Federal agencies are required to consult with Tribal officials before promulgating a proposed rule that (1) has Tribal implications, or (2) would impose substantial direct

compliance costs on Tribal governments and is not required by statute. If a rule would impose substantial direct compliance costs on a Tribal government and is not required by statute, the agency must provide funds to pay the direct compliance costs of the Tribal government (USEPA 2021).

### **Brunot Agreement of 1873**

The Brunot Agreement of 1873, signed by Chief Ouray and Commissioner Felix Brunot, created the current boundaries of the Southern Ute Reservation and relinquished a large portion of the previous 1868 Southern Ute Reservation, consisting of 5,780 square miles in the western part of Colorado, to the United States. As part of this treaty, Tribal members were given full hunting rights within the relinquished lands, which include the right to fish and hunt waterfowl. In 2008, the Southern Ute Indian Tribe entered a Memorandum of Understanding with the State of Colorado addressing the Tribe's hunting and fishing rights in the Brunot Area and establishing a cooperative approach to hunting, fishing, and wildlife law enforcement.

### **Colorado State Law**

The Colorado Nongame, Endangered, or Threatened Species Conservation Act (Colorado Revised Statutes Annotated §33-2-101–108) states that species and subspecies of wildlife that are indigenous, or native, to Colorado and found to be endangered or threatened in the State “should be accorded protection in order to maintain and enhance their numbers to the extent possible.” The act directs the Colorado Parks and Wildlife (CPW) Commission to establish a list of threatened and endangered species in the state and review this list at least once every five years to determine if a change in the status of any listed species is needed. The gray wolf is listed as an endangered species by the state. Under the act, it is illegal for any person to take, possess, transport, export, process, sell or offer for sale, or ship any species determined by the state to be endangered. The act authorizes CPW to carry out management programs for threatened and endangered and nongame wildlife species, including acquisition of land or aquatic habitat, establishing agreements with federal or state agencies or private individuals, and management of wildlife to alleviate damage to property or protect human health.

State statute 33-2-105.8 requires the CPW Commission to develop a plan to restore and manage gray wolves in Colorado, using the best scientific data available, and begin reintroductions of gray wolves by December 31, 2023, only on designated lands. According to the statute, the state's plan to restore and manage gray wolves must include:

- The selection of donor populations of gray wolves;
- The places, manner, and scheduling of reintroductions of gray wolves by CPW, with reintroductions restricted to designated lands;
- Details for the reintroduction and management of gray wolves, including actions necessary or beneficial for establishing and maintaining a self-sustaining population; and
- Methodologies for determining when the gray wolf population is sustaining itself successfully and when to remove the gray wolf from the list of endangered or threatened species.

State statute 35-40-101 articulates that it is the duty of the Commissioner of Agriculture to control depredating animals within the state of Colorado to reduce economic losses to agricultural products or resources. The Commissioner has exclusive jurisdiction over the control of depredating animals through rule making done in consultation with the CPW Commission with the exception of controlling state-threatened or endangered depredating animals. The CPW Commission must approve any rules concerning

the taking of state-threatened or endangered depredating animals prior to the adoption of such rules by the Commissioner of Agriculture.

## International Treaties

Several international treaties affect how the federal government manages federal land and wildlife (including federally listed threatened and endangered species) under federal authorities, including the Convention of Nature Protection and Wildlife Preservation in the Western Hemisphere and Convention on International Trade in Endangered Species of Wild Fauna and Flora. These treaties differ in emphasis and species of primary concern but collectively provide clear mandates for identifying and protecting important habitats and ecosystems and protecting and managing individual species.

## References

### National Park Service (NPS)

- n.d. Law & Policy. Accessed September 23, 2022. Available at: <https://www.nps.gov/subjects/wilderness/law-and-policy.htm> -  
:~:text=The%20Wilderness%20Act%20of%201964%20established%20the%20National,Forest%20Service.%20NPS%20Policy%20Helps%20Support%20the%20Law

### U.S. Department of Agriculture-Animal and Plant Health Inspection Service (USDA-APHIS)

- n.d. Wildlife Damage. Accessed September 23, 2022. Available at: <https://www.aphis.usda.gov/aphis/ourfocus/wildlifedamage>

### U.S. Environmental Protection Agency (USEPA)

- 2021 Summary of Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments. Accessed September 23, 2022. Available at: <https://www.epa.gov/laws-regulations/summary-executive-order-13175-consultation-and-coordination-indian-tribal>

### U.S. Fish and Wildlife Service (USFWS)

- n.d. Animal Damage Control Act. Accessed September 23, 2022. Available at: <https://fws.gov/law/animal-damage-control-act>
- 1994 *The Reintroduction of Gray Wolves to Yellowstone National Park and Central Idaho. Final Environmental Impact Statement.* Prepared by the U.S. Department of the Interior Fish and Wildlife Service, Helena MT. May 1994. 414 pp.
- 2018 “What is a 10(j) Rule?” Accessed September 23, 2022. Available at: <https://www.fws.gov/sites/default/files/documents/ESA-section10%28j%29-fact-sheet.pdf>