



State of Utah

SPENCER J. COX  
Governor

DEIDRE M. HENDERSON  
Lieutenant Governor

## Department of Natural Resources

JOEL FERRY  
Executive Director

### Public Lands Policy Coordinating Office

REDGE B. JOHNSON  
Director

April 18, 2023

Submitted via electronically: <https://www.regulations.gov> and [Colorado\\_wolf\\_10j@fws.gov](mailto:Colorado_wolf_10j@fws.gov)

Anna Muñoz  
Acting Regional Director  
U.S. Fish and Wildlife Service  
5275 Leesburg Pike  
Falls Church, VA 22041

RE: **Establishment of a Nonessential Experimental Population of the Gray Wolf in the State of Colorado; Environmental Impact Statement**  
FWS-R6-ES-2022-0100

Dear Director Muñoz:

The State of Utah, (“State”), through the Public Lands Policy Coordinating Office, in coordination with the Utah Division of Wildlife Resources (“DWR”), has reviewed the Fish and Wildlife Service’s (“Service”) proposed rule as published in the Federal Register February 17, 2023, regarding the Establishment of a Nonessential Experimental Population of the Gray Wolf in Colorado (“Proposed Rule”) and the Draft Environmental Impact Statement (“DEIS”) associated with the same. The State provided previous comments August 22, 2022, and incorporates those comments by reference. The State provides the following specific comments regarding both documents and general comments regarding the Service’s proposed 10(j) permit contemplated in the Proposed Rule and DEIS to allow for Colorado’s reintroduction of gray wolves:

#### **I. Introduction/background:**

Utah has long advocated for removing the gray wolf from the Endangered Species Act (“ESA”) because the species is not at risk of extinction and the State of Utah is committed to responsible management of unlisted gray wolves that arrive in Utah by naturally occurring dispersal events. In the Western United States, over 2,400 gray wolves occur across Idaho, Montana, Wyoming, Washington, Oregon, and California. They also continue to expand their

## **Establishment of a Nonessential Experimental Population of the Gray Wolf in Colorado**

April 18, 2023

Page 2

range in the Western United States, with recent documentation of established wolves in the North Park area of Colorado. The Great Lakes wolves are even more robust, with over 4,200 wolves occupying Minnesota, Wisconsin, and Michigan. Both the Western United States and Great Lakes metapopulations are connected to nearly 30,000 wolves in Canada, meaning the wolves in the United States no longer exist in isolated populations. They are stable populations within a vast, interconnected network of gray wolves inhabiting North America. The Service recognized this in the DEIS, noting “[w]olves that have dispersed to Colorado are part of the Western United States metapopulation, which is also connected to the large population (>15,000) of wolves in western Canada.” DEIS, p. 3-8.

In short, the gray wolf and its constituent subspecies, excluding the Mexican wolf, are not in danger of extinction throughout all or a significant portion of their respective ranges, and are not likely to become so in the foreseeable future. The gray wolf nevertheless remains listed as endangered throughout most of Utah, except for the small section within the currently delisted Northern Rocky Mountains Population Segment (“NRM”). Utah therefore does not have management authority over wolves throughout most of the state and the proposed introduction of wolves into Colorado and the associated 10(j) permit, as outlined in the Proposed Rule and DEIS, has enormous potential consequences for the state. Nevertheless, Utah offers qualified support to the issuance of a 10(j) permit for Colorado and the associated flexibility allowed under such a rule, with several critical conditions and concerns discussed herein.

### **a. Current conservation activities and management plans in Utah.**

Because gray wolves are listed as endangered throughout most of the state, DWR wolf management is confined to the northeast corner of Utah where the species is currently delisted and guided by the Wolf Management Act, Utah Code § 23-29-201 et. Seq (“the Act”). The Act directs DWR to manage wolves to prevent the establishment of a viable pack in all areas of the state where the wolf is not listed under the ESA until the wolf is completely delisted and removed from federal control in the entire state. The Act also directs the DWR to request that the Service immediately remove any wolves discovered in areas of Utah where they are still listed under the ESA. However, the Wolf Management Act no longer applies when wolves are delisted and DWR is then directed to manage wolves according to the Utah Wolf Management Plan (sometimes referred to herein as “the Plan”). Pursuant to the Plan and in accordance with state law (Utah Code Ann. §§ 23-14-1(2) and 23-14-3(2)), DWR will manage naturally established wolf populations on a sustainable basis post delisting.

The Utah Wildlife Board first approved the Plan in 2005 and has since extended its implementation through 2030. The explicit goal of the Plan is “to manage, study, and conserve wolves moving into Utah while avoiding conflicts with the wildlife management objectives of the

## Establishment of a Nonessential Experimental Population of the Gray Wolf in Colorado

April 18, 2023

Page 3

Ute Indian Tribe; preventing livestock depredation; and protecting the investment made in wildlife in Utah.” (See Utah Wolf Management Plan, attached hereto). The Plan is intended to be an interim plan, covering that time between statewide delisting and the development of two naturally occurring wolf packs in Utah. Nevertheless, it provides the state with a series of management objectives and strategies to manage wolves effectively and it was written to be adaptive in nature, so that, as conditions change, the plan may adapt to those changes. Moreover, the two-pack establishment metric is not a population cap, but rather a trigger to plan for the next phase in wolf management. The Plan is therefore designed to ensure the conservation of naturally establishing wolves, while ensuring the protection of other interests throughout the state. Utah will continue to advocate for the delisting of gray wolves throughout the state to allow for management pursuant to the Plan.

Even before the Plan takes effect, however, DWR has the resources contemplated in the Plan and necessary for management of wolves within the State. Biologists in DWR headquarters and each of five administrative regions have received extensive on-the-ground training in field identification of wolves. Additionally, DWR has comprehensive guidelines to ensure the proper and consistent response to wolves in the state and protocols have been developed to guide the humane handling of wolves. Utah also has baseline data on mule deer, elk, and moose, including cause-specific mortality pre-wolf establishment. That data will allow DWR to better understand the impacts of wolves on prey species and will help in the maintenance of sustainably hunted populations of prey species. Additionally, the State regularly works with livestock producers in effected areas throughout the state to obtain data regarding current mortality, as compared to post-introduction mortality. Again, this information will allow for an informed approach to wolf management throughout Utah after Colorado’s proposed reintroduction.

Despite these preparations, Utah’s Management Plan is not currently in effect and Utah’s management authority is limited. It is imperative, therefore, that Utah receives authority under a 10(a)(1)(A) permit, authorized pursuant to the proposed 10(j), to capture and return any dispersing wolves back to Colorado. This is even more critical considering the proximity of the proposed introduction zones to the Mexican Wolf Experimental Population Area (“MWEPA”) in Arizona and New Mexico. Utah is not part of the Mexican wolf’s historic range. However, there is a substantial likelihood that gray wolves establishing within the State, particularly those from the proposed Colorado reintroduction, could disperse to the historical habitat of the Mexican wolf, exposing the subspecies to hybridization (intergradation) with the gray wolf. Indeed, several studies identify Utah as a core area of potential connectivity between current and the proposed Colorado wolf population and the MWEPA.<sup>1</sup>

---

<sup>1</sup> See, e.g., Carroll et al. 2014; Carroll et al. 2021).

## Establishment of a Nonessential Experimental Population of the Gray Wolf in Colorado

April 18, 2023

Page 4

Dispersal of these hybridized wolves within the core Mexican wolf populations in Arizona and New Mexico will swamp the unique genetic features of the subspecies and jeopardize its ongoing recovery.<sup>2</sup> Utah addressed this issue in separate comments regarding the Mexican wolf populations in the Southwest and reiterated its request for capture and return authority for Mexican wolves within the state. It is critical that the Service provide the same authority through a separate 10(a)(1)(A) permit in this instance.

### **II. Specific concerns with the Proposed Rule and DEIS:**

Utah's inability to manage wolves pursuant to its Wolf Management Plan is extremely concerning for the State, as Colorado's proposed introduction would place wolves as close as 60 miles from Utah's border and well within the dispersal capability of gray wolves. However, Utah is cognizant of the potential benefits associated with the proposed 10(j) rule outlined in the Proposed Rule and DEIS. Most notably, the proposed 10(j) allows flexibility in Colorado's management of wolves and provides further opportunity for Utah to obtain permits necessary to manage dispersing wolves by returning them to Colorado. Thus, while Utah has significant concerns with Colorado's reintroduction and the Proposed Rule and DEIS, as discussed herein, the State offers qualified support for the implementation of the proposed 10(j) permit, with several critical conditions.

Specifically, Utah will support Colorado's proposed 10(j) only after Utah is included in a 10(a)(1)(A) permit with Arizona and New Mexico that allows for Colorado's neighboring states to capture and return wolves to Colorado. Utah further requests that all gray wolves dispersing into Utah be considered part of the experimental population, which will allow for immediate capture and return to Colorado. Absent such allowances in a 10(a)(1)(A) permit, Utah will not support Colorado's 10(j) as outlined in the Proposed Rule and DEIS and will consider pursuing remedies outside of the current administrative process.

In addition to these necessary conditions, Utah has several concerns regarding the substance of the 10(j) permit, as outlined in the Proposed Rule and DEIS. First, the Service has jurisdiction over the implementation of the ESA, including the conservation of listed species such as the gray wolf. This extends to actions allowing for the introduction of listed species under a Section 6 cooperative agreement. Thus, Utah is concerned that the *action* of introducing wolves should have been assessed as part of the DEIS, with a thorough review of the environmental consequences within the state. This necessarily includes the socioeconomic, environmental justice, tribal, and wildlife concerns, but should also include the number introduced, the area of introduction, and population objectives for the introduction. Each of these issues have enormous potential for effect on both the reintroduced population of gray wolves and the existing

---

<sup>2</sup> Odell, et al. 2018, entire.

## **Establishment of a Nonessential Experimental Population of the Gray Wolf in Colorado**

April 18, 2023

Page 5

populations of Mexican wolves and other species of concern. The Proposed Rule and DEIS should address such potential effects, without merely assuming Colorado's plan will be adequate to address the same. Moreover, the action should have been assessed within the maximum area around reintroduction sites where wolves might be expected to range within the near and foreseeable future.

As discussed in the Proposed Rule, “[t]o the maximum extent practicable, section 10(j) rules represent an agreement between the Service, the affected State and Federal agencies, affected Tribes, and persons holding any interest in land that may be affected by the establishment of an experimental population.” Proposed Rule, p. 10264. Based on habitat, dispersal capabilities, and proximity, there can be no debate that the reintroduction will affect at least the eastern borders of Utah and potentially the entire state. The Service admits as much in the Proposed Rule, recognizing that it was reasonable to include all of Colorado in the proposed experimental population because wolves have “high dispersal ability.” Proposed Rule, p. 10264. And yet, the Service's analyses stop abruptly at the Colorado border and neither the Proposed Rule nor the DEIS include adequate consideration of tribal, county, or state interests within Utah. This is concerning for a state that is well within the dispersal capability of Colorado's reintroduced wolves.

To address these potential effects, Utah needs a mechanism to remove wolves from the state and return them to Colorado. It is entirely possible for a 10(j) plan to include management restrictions, protective measures, or other special management concerns to ensure isolation and/or containment of an experimental population. Such management restrictions were implemented in the case of the red wolf and Mexican wolf and should be considered here because of the proximity to other experimental and existing wolf populations. To ensure such containment and as discussed above, Utah, along with the states of Arizona and New Mexico, requests full authority, pursuant to a 10(a)(1)(A) permit under the ESA, to capture wolves dispersing into the state and immediately return those wolves to Colorado. Further, Utah asks for clear language, in both the Final Environmental Impact Statement and the Final Rule associated with the 10(j), establishing that all gray wolves dispersing into Utah will be considered part of Colorado's experimental population and allowing for immediate capture and return to Colorado.

Second, Utah is concerned that the Service did not fully evaluate the “no-action alternative” outlined in the DEIS. The Service suggests that Colorado can move ahead with the reintroduction regardless of the Service's involvement pursuant to Colorado's cooperative agreement under Section 6 of the ESA. However, Colorado's draft plan requires management flexibility beyond what would be allowed under a Section 6 agreement. The Proposed Rule and DEIS do not address or analyze this issue. Utah requests additional information as to how the

## Establishment of a Nonessential Experimental Population of the Gray Wolf in Colorado

April 18, 2023

Page 6

Service can defer to Colorado's proposed management plan in the absence of a 10(j) and under an alternative Section 6 cooperative agreement.

Third, Utah is concerned that the proposed reintroduction zones are not outside of the current range of existing packs and/or populations of gray wolves and that the Service inconsistently defines occupied range. There is an established pack of wolves in the North Park area of Colorado, as discussed in the DEIS, and the Service has previously defined "current range" for wolves as the "combined scope of territories defended by the breeding pairs of an identifiable wolf pack or population."<sup>3</sup> The reintroduction zones are likely within the territories defended by the existing North Park pack of wolves and Utah asks for further evaluation of whether the proposed release is outside of the current range of an identifiable pack and therefore consistent with the requirements of Section 10(j) of the ESA.

Fourth, Utah asks for consideration in the Final Rule and Final EIS for compensation for livestock depredation caused by dispersing wolves and additional options for dealing with such depredation, up to injurious harassment. As discussed, Utah is requesting authority under a 10(a)(1)(A) permit with Arizona and New Mexico to capture and return wolves to Colorado. This should limit livestock losses and/or effects on ungulate populations throughout the state. However, to the extent the 10(a)(1)(A) permit does not provide sufficient protection against such losses, Utah intends to utilize all options at its disposal to provide financial assistance for livestock owners that lose livestock as the result of wolves. This includes, but is not limited to, federal funding through programs such as the Livestock Indemnity Program and the Wolf-Livestock Demonstration Grant Program. Utah requests express recognition of its eligibility for participation in such programs, particularly as the latter is administered by the Service.

However, Utah is concerned that these programs will not provide full compensation to livestock owners, particularly as there are additional costs associated with wolf-livestock interactions that are not always reflected in calculations for individual livestock loss. This is of particular concern in the counties neighboring Colorado, as wolves are likely to have a disproportionate effect on low income and minority livestock owners. The Service analyzed these issues in the environmental section of its DEIS and found a high likelihood of disproportionate effects in the Colorado counties along Utah's border. However, the DEIS did not include similar analyses for Utah's neighboring counties. Utah asks for express consideration of those interests in the Final Rule and Final EIS and further consideration of federal financial assistance for wolf-related impacts on communities of environmental justice concern within Utah.

Finally, as discussed above, DWR has baseline data for wild ungulates throughout the state and is therefore uniquely equipped to evaluate the effect of wolves on ungulate populations.

---

<sup>3</sup> See *Wyoming Farm Bureau Fed'n v. Babbitt*, 199 F.3d 1224, 1236 (10th Cir. 2000).

## **Establishment of a Nonessential Experimental Population of the Gray Wolf in Colorado**

April 18, 2023

Page 7

DWR is also committed to increasing ungulate monitoring efforts for populations near the proposed reintroduction zones. This information will help to inform proper wolf management into the future and allow for early detection of problematic wolves. Consistent with the requested capture and take provisions, Utah asks for express authority in the 10(a)(1)(A) permit for Colorado's neighboring states to immediately remove any wolves that affect ungulate populations within Utah.

In summary, there is nothing in the DEIS or Proposed Rule that justifies or lays out capture and return provisions for Utah. Conversely, it is repeatedly stated that wolves that wander outside of the 10(j) boundary will have the ESA status of where they are found. There are only vague statements regarding management of wolves dispersing into other states and suggestions that the Service will work with Arizona and New Mexico to manage potential interactions with Mexican wolves. Utah requests the Service include clear language in the Final Rule and Final EIS that allows for capture and return provisions, pursuant to a 10(a)(1)(A) permit under the ESA, for Utah, New Mexico, and Arizona based on the boundaries of the experimental population. Additionally, Utah requests the 10(a)(1)(A) permit include additional authority to manage wolves up to injurious harassment. This will allow Utah to manage the inevitable effects the introduced population may have on interests within the State of Utah and prevent dispersal into the Mexican wolf experimental population.

### **Conclusion:**

As drafted, the Proposed Rule and DEIS do not address the effect Colorado's reintroduced wolves will have on the state of Utah and fail to include management prescriptions to address those effects. However, Utah recognizes the value of the management flexibility allowed under Colorado's proposed 10(j) permit and offers qualified support to the issuance of the permit, with several critical conditions. Specifically, Utah requests clear language in the Final EIS, Final Rule, and 10(j) permit, recognizing that Utah will receive a 10(a)(1)(A) permit, along with Arizona and New Mexico, that allows for management flexibility, up to injurious harassment, and provides a mechanism for Utah to capture and return all dispersing gray wolves to Colorado.

**Establishment of a Nonessential Experimental Population of the Gray Wolf in Colorado**

April 18, 2023

Page 8

The State appreciates the cooperative relationship it has with the Service and the consideration of the concerns outlined herein. Please direct any written correspondence to Jason DeForest, Assistant Attorney General, at the Public Lands Policy Coordinating Office at the address below or call 385-395-9884 to discuss any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'Redge B. Johnson', written over a horizontal line.

Redge B. Johnson  
Director