DISTRICT COURT, DENVER COUNTY, COLORADO Denver City and County Building 1437 Bannock Street Denver, CO 80202 Phone Number: (720) 865-8301	
Plaintiff: **WILDEARTH GUARDIANS** v. Defendants: **COLORADO PARKS AND WILDLIFE COMMISSION and COLORADO PARKS AND WILDLIFE.**	▲ COURT USE ONLY ▲
Attorney for Plaintiff: Stuart Wilcox WildEarth Guardians 2590 Walnut Street Denver, CO 80205 (720) 331-0385 swilcox@wildearthguardians.org Atty. Reg. #: 44972	Case No. 2017CV030219 Div. Court Room No. 414
PLAINTIFF'S OPENING BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT	

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I. INTRODUCTION

Plaintiff WildEarth Guardians ("Guardians") seeks relief from the Colorado Parks and Wildlife Commission's ("Commission's") approval of Colorado Parks and Wildlife's ("CPW's") Upper Arkansas Predator Control Plan ("Upper Arkansas Plan") and Piceance Basin Predator Control Plan ("Piceance Plan") (collectively "Plans"). The Plans continue the legacy of scientifically baseless and discredited persecution of bears and cougars in the West. Guardians asks the Court to determine that, when the Commission approved the Plans, it violated Amendment 14 to the Colorado Constitution, its implementing legislation, and its duties to protect, preserve, and perpetuate wildlife for all of the people of Colorado and to be a good trustee of the wildlife resource. Guardians further requests that the Court vacate the Commission's approval of the Plans.

II. BACKGROUND

A. The Upper Arkansas and Piceance Basin Predator Control Plans

In 2015, in an attempt to boost mule deer numbers to appease certain hunting interests and to raise revenue for itself, CPW devised a plan to increase cougar (*Puma concolor*) hunting quotas in mule deer data analysis unit ("DAU") D-16, a 2,370 square mile area of the State. REC00651; REC00259. This was a typical "predator management" action for CPW. However, CPW withdrew this 2015 proposal due to public involvement concerns and its inability to timely complete a requested cost-benefit analysis. See REC00259; REC06635-6648.

Unfortunately, CPW doubled down and resurrected an even more problematic version of the proposal the following year. The 2016 iteration is the challenged Upper Arkansas Plan. The Upper Arkansas Plan requires killing 61, or "50%", of the cougars in

DAU D-16 in its first year and then killing enough individuals to keep the population at this suppressed level for three years. REC00650-651. For years 4-9 the quota in D-16 becomes 12 cougars per year, "10%" of the population. Id. During years 1-6 of the Upper Arkansas Plan, cougar killings in DAU D-34, a separate 2,524 square mile area of the State, will proceed at 15 cougars per year, "10%" of the population. Id. Then in years 7-9 the quota skyrockets to 73 cougars in D-34, "50%" of the population. Id. However, CPW has no location-specific population data to inform these estimates or to ensure the health of cougar populations in these areas.

When it reintroduced the Upper Arkansas Plan, CPW no longer relied exclusively on raising hunting quotas. CPW added a component whereby, if recreational hunters failed to kill enough cougars in the Plan area, CPW would pay private hunters and Wildlife Services (the euphemistically named federal wildlife-killing program) to kill more cougars. This component is designed to ensure that CPW reaches its numerical cougar-killing goal. See Answer ¶ 26; REC06493 lines 1-8; REC06616-6617. Wildlife Services will use methods that include snaring and then shooting cougars and hounding (where hounds chase cougars up trees and Wildlife Services then shoots the treed cougars from close range). See REC00636; REC02459.

In 2016, CPW also proposed a second killing campaign, the Piceance Plan. The Piceance Plan relies solely on Wildlife Services, using the same methods as in the Upper Arkansas Plan, to kill both cougars and black bears (*Ursus americanus*) in a different, nearly 500 square mile, area of the State. See REC00635-636. CPW "anticipates" that Wildlife Services will kill between 5-10 cougars and 10-20 bears every year for the three-year duration of the Plan, but leaves open the possibility of killing more. REC00392;

REC00636. CPW does not even guess the population percentages that Wildlife Services will kill under the Piceance Plan and instead only says that the Plan's killing area represents 6% and 16% of the area of the cougar and bear DAUs that it is a part of respectively. REC00636. This is likewise insufficient to ensure adequate populations of cougars and bears.

Many individuals and organizations, including Guardians, repeatedly warned CPW and the Commission that the Plans are both illegal and contrary to the public interest. These warnings included a petition that quickly gathered 92,000 signatures opposing the Plans and that was presented to the Commission; over 8,000 written public comments from Coloradans, nearly 99% of which opposed the Plans; a presentation to the Commission by Guardians identifying some of the many legal and scientific flaws with the Plans; and a vast gathering of citizens providing testimony at the Commission's December meeting, the majority of whom opposed the Plans. REC06590 lines 10-11; REC00447; REC00584; REC00277-294; Answer ¶ 33. However, the Commission ignored the citizens' evidence of illegality and unanimously approved the Plans as proposed by CPW in a single voice vote. Guardians requests that this Court declare that the Commission's approval of the Plans is illegal and vacate that approval.

B. Amendment 14

In 1996 voters amended the Colorado Constitution when they passed Amendment 14. Amendment 14 begins with an explicit blanket prohibition on the use of snares to take wildlife. Colo. Const. Art. XVIII § 12b(1) ("It shall be unlawful to take wildlife with any … snare in the state of Colorado."); C.R.S., § 33-6-203(1) ("it is unlawful to

take wildlife with any … snare in the state of Colorado.").[1] If an act of snaring wildlife does not meet one of the limited exemptions to Amendment 14, it is illegal. The Nonlethal Methods Exemptions, or 2C Exemptions, allow only *nonlethal* snaring of wildlife and only for bona fide scientific research, falconry, relocation, or medical treatment of the animal being captured. C.R.S., § 33-6-206; Colo. Const. Art. XVIII § 12b(2)(c). The Colorado General Assembly ("Legislature") passed legislation implementing Amendment 14 in 1997. C.R.S., §§ 33-6-201-209. Defendants subsequently promulgated regulations defining the bona fide scientific research exemption to Amendment 14.[2] 2 C.C.R. § 406-1300(A).

In an attempt to skirt Amendment 14 and still allow Wildlife Services to use snares to catch cougars and bears in order to then shoot the animals, CPW applied a thin scientific veneer to these wildlife management measures and characterized the Plans as "bona fide scientific research." However, the Plans do not meet the requirements of this exemption and are therefore in violation of Amendment 14 and its implementing legislation and regulations.

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[1] Amendment 14 also prohibits taking wildlife with any leghold trap, any instant kill body-gripping design trap, or by poison. Colo. Const. Art. XVIII § 12b(1). Should Defendants use any of these other prohibited items, their use would be illegal for the same reasons as snares.

[2] Amendment 14 uses the term "scientific research projects." Colo. Const. Art. XVIII § 12b(2)(c). The Legislature, clarifying that sham science would not meet the scientific research the exemption, used the term "bona fide scientific research" in its implementing legislation. C.R.S., § 33-6-206(1)(a). The regulations further implement the voters' intent in this regard by outlining stringent requirements that must be met for "science" to be "bona fide." 2 C.C.R. § 406-1300(A). For consistency and clarity, Guardians will use the term "bona fide scientific research" throughout this brief.

C. Defendants' other duties in managing wildlife

As trustees of the public interest in wildlife, CPW and the Commission are also required to preserve and maintain adequate populations of all wildlife throughout the State, not just mule deer. The legislative declaration of CPW's responsibilities as to wildlife begins: "[i]t is the policy of the state of Colorado that the wildlife and their environment are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and its visitors." C.R.S., § 33-1-101(1). The Legislature has also declared that these duties are in the public interest. C.R.S., § 34-60-102(1)(a)(IV). In recognition of these responsibilities, CPW's mission includes "to perpetuate the wildlife resources of the state…" In addition, pursuant to C.R.S., § 33-1-106(1), the Commission must "maintain adequate and proper populations of wildlife species." The Commission may make a decision affecting wildlife populations only after it conducts an investigation and determines the action is "necessary to assure maintenance of adequate populations of wildlife or to preserve the proper ecological balance of the environment." C.R.S., § 33-1-106(1)(a). These enabling statutes demonstrate the vital importance to Defendants' respective missions of preserving wildlife throughout the State. However, the Plans violate these requirements and are therefore illegal.

D. Mule deer and development in Colorado

As previously discussed, the purported purpose of the Plans is to boost mule deer numbers in the Plan areas. However, the Plans refuse to acknowledge that mule deer declines are actually caused by degraded habitat conditions, here primarily residential and oil and gas development on mule deer habitat, and not predation. CPW now attempts to

distance itself from its past admissions that declining mule deer populations are due to habitat conditions, instead choosing to scapegoat cougars and bears for the decline. Superficial references to science cannot remedy this fundamental shortcoming.

Colorado's mule deer populations have varied extensively since people started recording them. Numbers peaked in the 1940's, when mule deer were overpopulated and overbrowsed the range, resulting in decades-long habitat damage. REC03696; REC03706; REC03727. Although mule deer numbers were also high in the 1980's, an average 33% of fawns starved to death annually in the Piceance Basin, which includes the Piceance Plan area, during that decade because the land was incapable of supporting these high numbers. REC00632. Ongoing conversion of mule deer habitat to other uses and ongoing habitat degradation have further reduced the carrying capacity of the landscape, making it incapable of supporting historic mule deer numbers. REC03696-3697; REC03704-3707; REC03727-3728; REC01051-01052.

One recent study of the effects of land use change on mule deer indicated that housing development was correlated with the highest magnitude negative effect on mule deer populations, followed by oil and gas development, and that both of these development factors exceeded the impacts of key weather variables known to be important to juvenile deer survival. REC01051. These conclusions are concerning because from 1980-2010 there was a 37% increase in residential development in mule deer DAUs in Western Colorado, which includes all areas at issue in the Plans. REC01048. During the same time period, mule deer habitat within 200 meters of an oil and gas well in these areas also increased by 246%. REC01049. The study's authors

characterized the impacts of this boom in development as "highly disconcerting for mule deer." REC01053.

The effects of this development will continue to increase. For example, the Piceance region currently supports approximately 250 active gas well pads. REC02453; REC02554; see also REC00148 (noting fragmentation of habitat from oil and gas development). However, the U.S. Bureau of Land Management (which administers much of this oil and gas leasing and development) projects energy development throughout northwest Colorado to grow by about 50,000 wells in the next 30 years, many of which will be located in the Piceance Basin. REC02453; REC03353. The intermountain west, including Colorado, also continues to experience rapid human population growth with extensive further encroachment into heretofore-wild lands expected. REC01053.

Figure 1: A satellite image of the Piceance Basin mule deer winter range (orange boundary from the Piceance Plan map REC03645). Energy and road development are abundant throughout the region and expected to increase in coming years. REC03646.

In summarizing the many studies assessing the causes of mule deer declines in the West, CPW has previously stated "[i]n each case, issues surrounding habitat were the driving cause of the decline, whereas the role of predation or other factors had little or no noticeable impact." REC02227 (testimony from CPW, lead author of testimony is Chuck Anderson, who is also the lead researcher for the Piceance Plan (See REC00631)). In particular, CPW said "[o]il and gas development may reduce the quantity of habitats, degrade the quality of habitats, or make portions of key habitats unavailable to mule deer because of behavioral avoidance. Reductions in quantity and quality of habitat available to mule deer may reduce populations to levels inadequate to support biological, recreational and aesthetic needs that are valued by the people of Colorado and the citizens of the United States." REC02225-2226. This is exactly what is happening now. Because of the insidious nature of these threats, CPW admonished that "absence of evidence of proof of population declines associated with oil and gas development should not be confused as evidence of the absence of such an effect." REC02229. However, this is precisely what CPW has attempted to do in denying the harm that oil and gas development is having on mule deer. REC06500 lines 6-8.

Mule deer numbers have already declined in response to reduced, damaged, and fragmented habitat with consequent reduced carrying capacity. See REC05132. However, Defendants have set a population objective of 501,000-557,000 mule deer for the State. REC04963; REC05131. This goal is based on historical herd objectives and not the land's ability to support this many mule deer. REC00029 (CPW's Eric Bergman indicating that using historical herd numbers, as here, instead of carrying capacity to set population objective is "tenuous" and lacking in a biological basis). This has placed

pressure on CPW to meet this potentially unrealistic goal, despite the fact that it has limited authority to change the true causes of mule deer population declines—development from residential and oil and gas sources. REC02225-2229; REC05953; REC02453-2455. The Plans are a result of this contradiction and a desire to take some action, not a reasonable basis to believe the Plans will work.

III. STANDARD OF REVIEW

Summary judgment is appropriate when the pleadings and supporting documents demonstrate that no genuine issue as to any material fact exists and that the moving party is entitled to summary judgment as a matter of law. C.R.C.P. 56(c), (h); Martini v. Smith, 42 P.3d 629, 632 (Colo. 2002) (citation omitted). Statutes and constitutional amendments are largely interpreted in the same way. See, e.g., Bruce v. City of Colorado Springs, 129 P.3d 988, 993 (Colo. 2006). Interpretation of constitutional amendments and statutes are questions of law that the court reviews de novo, giving no deference to the agency. Id. at 992; Rocky Mtn. Animal Defense v. Div. of Wildlife, 100 P.3d 508, 513 (Colo. App. 2004) ("RMAD"); Simpson v. Cotton Creek Circles, LLC, 181 P.3d 252, 261 (Colo. 2008). When interpreting a constitutional amendment, the court's primary consideration must be to give effect to the will of the voters who enacted it. Bruce, 129 P.3d at 992-93; Davidson v. Sandstrom, 83 P.3d 648, 654 (Colo. 2004); Zaner v. Brighton, 917 P.2d 280, 283 (Colo. 1996). To determine voters' will, the court proceeds as it would in interpreting a statutory provision. Bruce, 129 P.3d at 993; RMAD, 100 P.3d at 514. It must first consider the plain language. Davidson, 83 P.3d at 654; Zaner, 917 P.2d at 283; In re Interrogatories Relating to the Great Outdoors Colo. Trust Fund, 913 P.2d 533, 538 (Colo. 1996) ("GOCO"). Courts should also be guided by

general principles of statutory interpretation and construction in interpreting constitutional provisions. RMAD, 100 P.3d at 514; see also C.R.S., § 2-4-201. A court may also discern the intent of a constitutional provision enacted by the voters by considering materials such as the ballot title, the submission clause, and the biennial "Bluebook" analysis of ballot proposals prepared by the Legislature. In re House Bill 99-1325, 979 P.2d 549, 554 (Colo. 1999).

Courts must interpret a constitutional amendment in a manner that will render every word operative, rather than in a manner that will make some words idle or nugatory. GOCO, 913 P.2d at 542. Courts should avoid an unreasonable interpretation or one that produces an absurd result. Cook v. City & County of Denver, 68 P.3d 586, 588 (Colo. App. 2003). A court's interpretation of a constitutional amendment is constrained by the state of things existing at the time the provision was framed and adopted. GOCO, 913 P.2d at 540; Krutka v. Spinuzzi, 384 P.2d 928, 933 (Colo. 1963). Where possible, courts should adopt constructions of constitutional provisions in keeping with those given by coordinate branches of government, including the Legislature's resolution of ambiguities in constitutional amendments through its implementing legislation. GOCO, 913 P.2d at 538, 539.

IV. SUMMARY OF THE ARGUMENT

The Plans are illegal for a variety of reasons. First, the Plans violate Amendment 14 and its implementing legislation because cougars and bears will be snared under the Plans for the purpose of killing them. The bona fide scientific research exemption to Amendment 14 does not apply when wildlife will be snared for the purpose of killing it. Second, the Plans violate Amendment 14 and its implementing legislation and regulations

because they do not fit within the regulatory definition of bona fide scientific research. Had the Commission actually considered whether the Plans meet this definition, it would have seen that they do not because the Plans: (1) are not being carried out for the purpose of acquiring new and relevant knowledge, (2) will not provide new and relevant knowledge, (3) will not be carried out in a humane fashion by qualified personnel, and (4) will not produce data suitable for publication in a refereed scientific journal. Finally, the Plans violate numerous other statutory and policy directives designed to ensure that Defendants protect the public interest in wildlife and are good trustees of the wildlife resource. As a result, we request that the Court declare the Plans illegal and vacate the Commission's approval of the Plans in order to restore the status quo existing before their illegal approval. See Farmer v. Colo. Parks & Wildlife Comm'n, 2016 COA 120, ¶¶ 44-45, 382 P.3d 1263, 1271-72; C.R.S. § 24-4-106(7).[3]

[3] Guardians has standing to bring this lawsuit as laid out more completely in the affidavits that it filed with its temporary restraining order and preliminary injunction briefing. See Memorandum in Support of Plaintiff's Motion for Preliminary Injunction Exhs. 18, 19, 20, 21, 22; Plaintiff's Reply in Support of its Motion for Temporary Restraining Order and Preliminary Injunction Exhs. 25, 26, 34. Through these affiants, Guardians has demonstrated that "(1) it has suffered an injury in fact; and (2) the injury was to a legally protected interest as contemplated by statutory or constitutional provisions." See Bd. of County Comm'rs of Adams v. Colo. Dep't of Pub. Health & Env't, 218 P.3d 336, 338 (Colo. 2009) (citation omitted). Guardians has standing to sue on behalf of its members because (1) Guardians' members "would otherwise have standing to sue in their own right;" (2) the interests Guardians "seeks to protect are germane to the organization's purpose;" and (3) "neither the claim asserted, nor the relief requested, requires the participation of individual members in the lawsuit." See Conestoga Pines Homeowners' Ass'n v. Black, 689 P.2d 1176, 1177 (Colo. App. 1984) (quoting Hunt v. Wash. State Apple Advertising Comm'n, 432 U.S. 333, 343 (1977)); Buffalo Park Dev. Co. v. Mountain Mut. Reservoir Co., 195 P.3d 674, 688 (Colo. 2008), as modified on denial of reh'g (Nov. 24, 2008).

V. ARGUMENT

A. The Plans violate Amendment 14 and its implementing legislation.[4]

1. The plain language and structure of Amendment 14 and evidence of voter intent show that the Plans are not covered by the bona fide scientific research exemption.

Here the plain language of Amendment 14, the tools of statutory interpretation, and extrinsic evidence all show that the Plans' use of snares to trap and then kill wildlife does not meet the bona fide scientific research exemption to Amendment 14. See RMAD, 100 P.3d at 514. The Plans are accordingly unconstitutional and otherwise illegal.

a. The plain language of the bona fide scientific research exemption to Amendment 14 prohibits snaring wildlife for the purpose of killing it.

The plain language of Amendment 14 indicates that wildlife cannot be snared for the purpose of killing it under the bona fide scientific research exemption. This exemption is part of a group of exemptions that only allow actors to use "non-lethal snares, traps specifically designed not to kill, or nets" to trap wildlife for bona fide scientific research projects, falconry, relocation, or medical treatment of the animal being captured. See C.R.S., § 33-6-206; Colo. Const. Art. XVIII § 12b(2)(c). These purposes are uniformly non-lethal. By using the words "non-lethal" in this section (and nowhere else), voters and the Legislature made clear that wildlife are not to be taken by snares under these exemptions for the purpose of killing them. The intent is that snares are only allowed when the trapper's intention is to capture the animal alive and keep it alive.

[4] Amendment 14's implementing legislation clarifies and codifies the language of the Amendment. Therefore, all violations of Amendment 14 alleged herein are violations of both Amendment 14 and its implementing statute. However, to avoid redundancy, Guardians only explicitly refers to Amendment 14.

Amendment 14's plain language does not allow for an interpretation that as long as wildlife are captured live in a snare, the action does not violate the law even if the ultimate purpose for the capture is to kill the trapped animal.

Additionally, both the legislative enactment of Amendment 14 and the regulations implementing the trap ban refer to the bona fide scientific research exemption and the other exemptions in that section as the "nonlethal methods" exemptions. See C.R.S., § 33-6-206 (titling section as "Exemptions – nonlethal methods"); 2 C.C.R. §§ 406-302(B)(2), 406-900(c)(28) (both referring to C.R.S., § 33-6-206 as the "Nonlethal Methods Exemptions"). These characterizations further indicate that snaring wildlife for the purpose of killing it is outside of these "nonlethal" exemptions.

The Plans are thus outside the scope of activities allowed under the bona fide scientific research exemption and are illegal. However, if the Court determines that the plain language of Amendment 14 is ambiguous, then it should consider the following information in resolving that ambiguity.

b. The structure of Amendment 14 indicates that snaring wildlife for the purpose of killing it is not covered by the bona fide scientific research exemption.

Importantly, the Nonlethal Methods Exemptions are the only exemptions to Amendment 14 that prohibit use of lethal trapping. The Court should read this language in the context of Amendment 14 as a whole and harmonize all of the Amendment's language. See Jefferson Cnty. Bd. of Equalization v. Gerganoff, 241 P.3d 932, 935 (Colo. 2010). Defendants' reading of the Nonlethal Methods Exemptions fails to consider the intended meaning to this language.

Unlike the Nonlethal Methods Exemptions, Amendment 14 allows government

departments of health to use any of the otherwise prohibited tools for the purpose of protecting human health or safety. Colo. Const. Art. XVIII § 12b(2)(a). This other exemption thus allows nonlethal trapping, but also explicitly allows the use of lethal trapping for this specific purpose. In stark contrast, voters adopted a much more limited exemption for scientific research; one that does not allow killing. Where voters and the Legislature allowed for lethal measures in some exemptions, but expressly used the phrase "non-lethal" for other exemptions, they intended that difference to be operative in practice. The voters and the Legislature intended to allow only research involving live animals. Accordingly, snaring wildlife with the intention of killing it does not qualify for the bona fide scientific research exemption and violates Amendment 14.

Additionally, the statutory interpretation canon *noscitur a sociis* precludes a reading of "bona fide scientific research" that would allow CPW to snare wildlife for the purpose of shooting it. *Noscitur a sociis* means that we know the meaning of a word or phrase by the company it keeps. Young v. Brighton Sch. Dist. 27J, 325 P.3d 571, 579 (Colo. 2014) (citation omitted). This includes the principle "[t]hat [when] several items in a list share an attribute[, this] counsels in favor of interpreting the other items as possessing that attribute as well." Beecham v. United States, 511 U.S. 368, 371 (1994) (citations omitted); see also Young, 325 P.3d at 579. Because the remaining exemptions in the list containing the phrase "bona fide scientific research"—relocation, medical treatment of the animal being captured, and falconry—only allow snaring undertaken with the intent of keeping the animal alive, the same limitation also applies to so the bona fide scientific research exemption. See C.R.S., § 33-6-206; Colo. Const. Art. XVIII § 12b(2)(c).

Examining the definitions of the other exemptions bears this out. The regulations define "relocation" as "movement of live wildlife captured by a person to another site which is not contiguous to the capture site." 2 C.C.R. § 406-300(G) (emphasis added). Snaring wildlife for the purpose of killing it would preclude relocation. Similarly, the commonly understood purpose of "medical treatment" is that it is undertaken with the intent of benefitting the subjects, not with the intent of killing them. The legislative enactment of Amendment 14 explains that the exemption is for "[m]edical treatment of the animal being captured," but such treatment is precluded if the animal is killed. C.R.S., § 33-6-206 (emphasis added). The final exempted activity is falconry, defined as "the sport of hunting or taking quarry with a trained raptor." C.R.S., § 33-1-102(15). It is impossible to hunt with a dead hawk, thus snaring a hawk for the purpose of killing it would not be covered by this exemption.

When discussing these exemptions, Judge Naves aptly noted, "[u]nlike the situation where wildlife that is causing a threat to human health or safety or requires control may ultimately need to be killed to satisfy the purpose of the exception, the purposes served by subsection (2)(c) – scientific research, falconry, relocation and medical treatment – clearly all anticipate keeping the wildlife alive." Sinapu v. Colo. Wildlife Comm'n, 2006CV8933, at *13 (Denver Cnty. Dist. Ct. April 10, 2008) (attached as Exhibit 1) (emphasis added). Therefore, Defendants' Plans allowing Wildlife Services to snare bears and cougars for the purpose of shooting them violate Amendment 14.

c. When they passed Amendment 14, Colorado voters intended to ban activities like the snaring that will occur under the Plans.

Colorado voters intended that Amendment 14 start with a presumption that the use of snares is inhumane and should be banned and then provide a limited list of exemptions where snares are not banned. These voters favored other methods of controlling wildlife over snares and favored nonlethal over lethal wildlife management. They also considered and rejected allowing the use of snares to manage one species of wildlife to prevent predation of another. An Analysis of 1996 Ballot Proposals ("Bluebook") at 26 (attached as Exhibit 2). As a result, the Plans are amongst the types of activities that Colorado voters sought to ban.

This Court should implement the "objective sought to be achieved and the mischief to be avoided" by Amendment 14. Davidson, 83 P.3d at 655 (quoting Zaner, 917 P.2d at 283). To achieve this end, the Court may look to extrinsic evidence, including the interpretation of the Legislature, as found in the Amendment's implementing statute; Legislative Council materials; and to other relevant evidence of voter intent. Davidson, 83 P.3d at 655, 657; GOCO, 913 P.2d at 538, 539. The "Bluebook" is one source of relevant extrinsic evidence. Davidson, 83 P.3d at 655. The Bluebook is the Legislative Council's final analysis for ballot measures that is published and distributed to voters to provide them with information upon which they can decide whether to approve that year's ballot measures. The Bluebook "provides important insight into the electorate's understanding of the amendment when it was passed." Carrara Place, Ltd. v. Arapahoe County Bd. Of Equalization, 761 P.2d 197, 203 (Colo. 1988); Grossman v. Dean, 80 P.3d 952, 962 (Colo. App. 2003). Courts gives

considerable weight to the "evident contemporary interpretation of those actively promoting the amendment." Carrara, 761 P.2d at 202 (quoting Bedford v. Sinclair, 147 P.2d 486, 489 (Colo. 1944)).

The first argument in the Bluebook favoring passage of Amendment 14 was that snares and other traps "are inhumane and should be banned." Bluebook at 25. The Legislature also explained that the legislative implementation of Amendment 14 is "intended to honor the expressed desire of the people of Colorado to promote humane methods of animal control and discourage the use of inhumane methods while preserving the ability to protect human life, health, safety, and property by taking wildlife when there is no practical alternative." C.R.S., § 33-6-201(1)(b). Additionally, the arguments in favor of the Amendment also evidence a preference for using "[h]umane nonlethal methods." Bluebook at 26. When interpreting Amendment 14, the Court should recognize this preference for using wildlife management methods other than snares where possible and for managing wildlife in a nonlethal manner. See Davidson, 83 P.3d at 655.

The Bluebook explained that, at the time Amendment 14 was passed, snaring was an "established method[] approved by [CPW] to control some species of wildlife" and that CPW used snaring "to capture wildlife such as [cougars] that can be nuisances." Bluebook at 26. In fact, one of the Bluebook's arguments against Amendment 14 was that passing it would mean that snares "would not be available for [CPW] to protect threatened or endangered species from predators." Bluebook at 26. Coloradans therefore knowingly voted to curtail the suite of tools that CPW had been using for wildlife management in the State, including using snares to kill one wildlife species to prevent predation of another. Voters intended this even where that limitation could pose a threat

to biodiversity, i.e. where the prey was a threatened or endangered species. Accordingly, Amendment 14 would also bar CPW from using snares in an attempt to boost an already numerous prey species like mule deer. Snares are no longer available for CPW to use as a wildlife management tool, as it would under the Plans, regardless of how it characterizes those activities.

The presentation of the Nonlethal Methods Exemptions in the Bluebook also supports Guardians' claim that voters understood and intended that animals could not be snared under those exemptions for the purpose of killing them. In both the official ballot title from the Legislative Council and the Council's overview of Amendment 14 in the Bluebook, the Council re-ordered the Amendment 14 exemptions to group all of the exemptions that allow killing wildlife together and to separate out the Nonlethal Methods Exemptions, which do not allow snaring for the purpose of killing. Bluebook at 23, 24. This organization specifically drew voter attention to this fundamental difference and provided meaningful visual and conceptual differentiation between the exemptions. This restructuring made it clear to voters that passing Amendment 14 would prohibit wildlife snared under these exemptions from being killed.

Colorado voters were concerned that snaring is inhumane and wanted to broadly restrict its use. This intent requires a narrow reading of any exemption to Amendment 14 and further supports the Court finding that the Plans are illegal pursuant to Amendment 14. Defendants attempt to contravene the voters' intent here by repackaging their wildlife management activities as research studies, but such attempt must fail because it ignores the intent of the voters to ban snaring unless it is necessary for bona fide

scientific research. The Plans are not bona fide scientific research and are therefore not covered by the exemption.

2. The Plans do not meet the regulatory definition of bona fide scientific research and are therefore in violation of Amendment 14 and its implementing legislation and regulations.

Even if the bona fide scientific research exemption did allow snaring animals for the purpose of killing them (it does not), the Plans must be struck down because they do not fit into the regulatory definition of bona fide scientific research. Regulations are construed in the same way as statutory provisions; the court begins by looking to the plain language of the regulation, attributing terms their ordinary and customary meaning. Rags Over the Arkansas River, Inc. v. Colorado Parks & Wildlife Bd., 2015 COA 11M, ¶ 28, 360 P.3d 186, 192, as modified on denial of reh'g (Mar. 26, 2015), cert. denied sub nom. Rags Over the Arkansas River, Inc. v. Colorado Dep't of Nat. Res., No. 15SC328, 2015 WL 6445387 (Colo. Oct. 26, 2015) (citations omitted). If the plain language is unambiguous, the Court must give that language effect and need not resort to other canons of construction. Id. ¶ 28 (citations omitted). Notably, there is no interpretation of this regulatory definition predating approval of the Plans, and any position identified by counsel in this litigation that is not properly addressed in the record is not entitled to deference. See, e.g., Alaska v. Fed. Subsistence Bd., 544 F.3d 1089, 1095 (9th Cir. 2008); William Brothers, Inc. v Pate, 833 F.2d 261, 265 (11th Cir 1987) ("Common sense tells us that if deference were always to be given to the [agency's] litigating position, then [private parties] would be effectively denied the right to appellate review.").

a. The Commission never determined whether the Plans meet the regulatory definition of bona fide scientific research before approving them.

The regulations define bona fide scientific research as:

> systematic investigative or experimental activities which are carried out for the purpose of acquiring new and relevant knowledge pertaining to wildlife biology, ecology or management, or the revision of accepted conclusions, theories, or laws in the light of newly discovered facts, and which are conducted in a humane fashion by qualified personnel, and the results of which would meet the accepted standards for publication in a refereed scientific journal.

2 C.C.R. § 406-1300(A) (emphasis added). Not only did the Commission entirely fail to consider whether the Plans qualify as bona fide scientific research within the regulatory definition, but the available information clearly shows the Plans do not meet this definition. Because the Commission failed to consider this factor, and the Plans violate Amendment 14, the Court should strike down the Commission's approval of the Plans.

The Commission was required to consider whether the Plans met the definition of bona fide scientific research before it approved them. See Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto. Ins., 463 U.S. 29, 43 (1983) (agency rule is arbitrary and capricious "if the agency has … entirely failed to consider an important aspect of the problem…."). However, both CPW's spokesman, Jeff Ver Steeg, and the Commission's counsel instructed the Commission not to analyze this important issue and to instead defer to CPW, and the Commission did just that. See REC06603 lines 9-22 (Counselor Monahan says defer); REC06487-6488 (Ver Steeg advises Commission that it is not asked to evaluate study designs and science and asks that it defer to CPW on those issues). The Commission's failure to determine whether the Plans meet the bona fide scientific research definition before approving them in itself justifies overturning the

Commission's approval of the Plans. Additionally, as set forth below, the Plans do not meet the definition.

b. The Plans are not bona fide scientific research because they are being carried out for the purpose of wildlife management, not for the acquisition of new and relevant knowledge.

CPW has repeatedly admitted that the purpose of the Upper Arkansas Plan is wildlife management, not scientific research. See REC00259 ("Initially designed as a 5-yr Management Experiment (not a research project)") (emphasis added); REC00260 ("Modified Arkansas proposal from 5-yr management experiment to rigorous 9-yr research project and added Piceance project") (emphasis in original); REC06494 lines 11-16 (Jeff Ver Steeg characterizing Upper Arkansas Plan as a "management experiment" that did not have the "rigorous experimentation" CPW later proposed); REC06616-6617 (Ver Steeg said that original plan was not designed as a research project and was instead designed as a management experiment). This is a fatal flaw because the regulations require that the purpose of bona fide scientific research must be the acquisition of new and relevant knowledge. See 2 C.C.R. § 406-1300(A). This "for the purpose of" language requires that the Court look at the underlying purpose of the Plans. See 2 C.C.R. § 406-1300(A). CPW's purpose here—wildlife management—is thus inconsistent with this definition and invalid. CPW did not change the underlying purpose of the Upper Arkansas Plan—to kill cougars as a wildlife management measure—when CPW re-proposed it in 2016. CPW added the purported scientific purpose after the fact in an attempt to obscure the Upper Arkansas Plan's true nature and purpose.

With this strategy in place, CPW also presented the Piceance Plan, another wildlife management measure, as a scientific study. However, in defending its failure to

analyze bear and cougar populations in the Piceance Plan area, CPW asserts that it does not determine population statistics for "routine management purposes." REC00325. This statement belies the true purpose of the Piceance Plan as a wildlife management tool, rather than as a scientific study.

The true purpose of the Plans is also clear from the way that CPW refers to them. CPW presented the Plans to the public as the "Piceance Basin Predator Management Plan" and the "Upper Arkansas Predator Management Plan" and to the Commission as the "Piceance and Arkansas Predator Control Plans." REC00247 (CPW's presentation to the Commission); REC00418 (pamphlet circulated to public); REC00421 (another pamphlet circulated to public). These titles betray CPW's true motivations behind the Plans—to conduct snaring as part of its predator control/management activities—a purpose not exempted from Amendment 14's otherwise complete ban on the use of snares. Because CPW's motivation is management, not scientific research, the Plans cannot be bona fide scientific research and they thus violate Amendment 14.

c. The Plans are not bona fide scientific research because they will not provide new and relevant knowledge.

Even if scientific research were the legitimate purpose of the Plans, they will not provide new and relevant knowledge. CPW repeatedly justified the Plans as necessary to determine whether mule deer predation in the Plan areas has any effect on mule deer populations. See, e.g., REC06491 lines 6-12. CPW's rationale for ignoring the many existing studies establishing that predation almost never impacts prey populations is that those studies occurred in areas where the prey species populations were already limited by habitat, and, contrary to record evidence, CPW claims that mule deer in the Plan areas

are not limited by habitat. See, e.g., REC06506-6507; REC000275; REC06500 lines 6-8; REC06501 line 20-6502 line 1.

Contrary to CPW's claims, the Plan areas are incapable of supporting significantly larger mule deer populations. This is important because, where mule deer populations are at or near the limitations of their habitat, the carrying capacity of the land, studies indicate that predation almost never impacts the population. See REC00914; REC00645. CPW's data show that mule deer populations in the Piceance Plan area are at, very near, or even sometimes above carrying capacity. See REC06506-6507; REC00632; REC00121. This means that even a modest error in CPW's carrying capacity calculation could easily move the mule deer population above carrying capacity every year. Such errors are likely given that CPW's own scientist has said that carrying capacity is difficult to estimate and that "we don't know what carrying capacity is for deer in our herds." REC00029. In addition, a harsh winter could quickly reduce carrying capacity and put the present population well over the land's capability to sustain it. REC00029. In short, CPW asserts that the Piceance Plan is capable of providing new and relevant information because mule deer populations are significantly below carrying capacity, but the data CPW relies on to support this contention in fact contradicts it, or is at best indeterminate.

Even if the above data on carrying capacity were sufficient, it only relates to the Piceance Plan area. See REC00632. CPW has provided no carrying capacity estimates to support its conclusory statements that the mule deer populations in the Upper Arkansas Plan area are also below carrying capacity. Instead, CPW bases its carrying capacity claims for that area entirely on malnutrition rates of fawns. REC00646. Not only does

this data only apply to one of the two DAUs at issue in the Upper Arkansas Plan (D-16), but CPW's tepid endorsement of this basis is only that it "can give some indication about whether a given population is at or exceeds carrying capacity." REC00646 (emphasis added). However, even accepting CPW's data, forage in D-16 is limited to the point where nearly 1 in 11 mule deer fawns are already starving to death. Id. Therefore, D-16 is incapable of supporting increased populations of mule deer without improvements to habitat. Finally, even if this analysis were reasonable as to D-16, CPW has provided no information whatsoever regarding carrying capacity in D-34. CPW's data thus also fails to show that the Upper Arkansas Plan could provide new information. As a result, CPW has not identified a relevant data gap that the Plans could fill, and this is another reason that the Plans are not bona fide scientific research.

d. The Plans are not bona fide scientific research because they will not be implemented in a humane fashion by qualified personnel.

The Plans will not be implemented in a humane fashion by qualified personnel. This is highly problematic because the first argument in the Bluebook in favor of passing Amendment 14 is that snaring is "inhumane and should be banned." Bluebook at 25-26. As a result, ensuring that the Plans are carried out in a humane manner is vitally important. However, despite this clear evidence of voter concern and the requirement that bona fide scientific research be carried out in a humane fashion by qualified personnel (2 C.C.R. § 406-1300(A)), CPW's Plans did not meaningfully address these issues.

As a preliminary matter, the Plans' designs do not comply with CPW's Animal Care and Use Committee ("ACUC") Draft Protocols ("Draft Protocols") for cougars.

The Draft Protocols provide for euthanizing trapped animals only if they are severely injured and only allow that euthanasia to occur after the animal has been deeply anesthetized by a combination of drugs. REC00692-693 (where a trapped animal is severely injured it "will be deeply anesthetized with ketamine, Telazol® and xylazine or ketamine and metetomidine (IV or IM)" and then euthanized). The Plans provide that Wildlife Services will shoot all snared individuals, regardless of whether they are healthy, and do not mention anesthesia use at all. REC00213 ("Following capture, black bears and cougars will be humanely euthanized following USDA APHIS protocols."); REC00636 ("Cougar and black bear removal methods employed by WS will consist of cage traps, culvert traps, foot snares, and trailing hounds for capture and a firearm will be used for euthanasia."). The type of life-threatening injuries envisioned by the Draft Protocols as being grounds for euthanasia are relatively rare for cougars, affecting only 2.4% of snared individuals. REC00691. This indicates that the ACUC envisioned euthanasia being the rare exception, not the rule, in diametric opposition to Wildlife Services' actions under the Plans.

However, even if the Plan designs did follow the Draft Protocols, the Plans authorize Wildlife Services and private hunters, not CPW, to kill the cougars; and the available information indicates these non-employees are not qualified personnel and will not follow the Draft Protocols. REC00635; REC00650; REC06493 lines 1-8; REC06616-6617. CPW will not even be present during Wildlife Services' killing activities or during private hunting trips. See, e.g., REC00636 (requirement that Wildlife Services report kills within 5 days and bring carcasses to CPW, indicating CPW will not be present). Because the Plans do not assure compliance with the Draft Protocols, the

Protocols do not support that the Plans will be carried out in a humane manner by qualified professionals.[5]

Additionally, nothing in the record indicates that Wildlife Services will act in a humane manner of its own accord. When CPW asked, Wildlife Services admitted that it does not have its own trapping and euthanasia protocols. REC00096. Nothing in the record indicates that Wildlife Services intends to follow the Draft Protocols, or indeed any protocols whatsoever, in carrying out the Plans. Wildlife Services' agents are also not "qualified personnel" to carry out humane activities, as is required by the regulations. 2 C.C.R. § 406-1300(A). Indeed, the program has been beset by many scandals for horribly cruel practices. See REC05956 ("Wildlife Services is the subject of several extremely critical federal reports and journalistic exposés of its staffers' penchant for cruelty, abysmal record keeping, misuse of public funds, and severe environmental impacts."). As a result, CPW has no basis for assuming that Wildlife Services will conduct any activities in the required humane manner.

Finally, CPW intends to rely in part on private houndsmen to reach its suppression goals in the Upper Arkansas. REC06493 lines 1-5. These hunters use dogs to pursue wildlife and chase it up a tree, at which point they locate the dogs, and shoot the "treed" animal. REC02459. First, these hunters are not "qualified personnel" as their only qualification is the purchase of a hunting license. Second, there is no record evidence showing CPW requires hunters to follow the Draft Protocols, or that the hunters even know of the Draft Protocols. This evidentiary gap is significant because the Draft

[5] CPW provided no information whatsoever, not even ACUC draft protocols, indicating any measures usually taken to avoid inhumane treatment of bears, which will also be killed by Wildlife Services. See REC00213; REC00636. While CPW's analysis of humaneness is deficient as to cougars, it is nonexistent as to bears.

Protocols limit use of hounds in cases where a female cougar may have young that are too young to climb trees to prevent the dogs from killing the young cougars. REC00688; see also REC02459. Accordingly, there is no indication in the record that hounding under the Plans will be carried out in a humane manner to ensure protection of young cougars.

Because the Commission had no information upon which to determine that the Plans would indeed be carried out in a humane manner by qualified personnel, it had no basis on which to determine that the Plans were bona fide scientific research. Therefore, the Commission's approval of the Plans is unlawful.

e. The Plans are not bona fide scientific research because they will not meet the requirements for publication in a refereed scientific journal.

The definition of bona fide scientific research requires that the Commission consider whether the Plans would pass a scientific peer review process before approving snaring. Yet, CPW admitted that it would only address this consideration after the killings had already happened and the "studies" were complete. Moreover, CPW compounded its failure to make the requisite determination by erroneously directing the Commission to ignore this crucial factor in approving the Plans as well. See, e.g., REC06488 lines 2-10; REC00249 (slide title: "What is the Commission NOT being asked to do today?" slide says only "Not being asked to evaluate and approve the study designs."). This failure is particularly egregious here, where dozens of respected scientists and thousands of Colorado citizens have identified serious concerns with the Plans' designs and their capability to provide strong scientific inferences that will pass peer review.

Even if Defendants' "wait and see" approach to peer review were acceptable in the scientific community, Defendants are required under the bona fide scientific research definition to make this publication determination before approving snaring. The regulations state that an action is only bona fide scientific research if the results "would meet the accepted standards for publication in a refereed scientific journal." 2 C.C.R. § 406-1300(A) (emphasis added). The word "would" here is the past tense of will. United States v. Honeycutt, 816 F.3d 362, 373 (6th Cir.), rev'd on other grounds, 137 S. Ct. 1626 (2017) (citing Oxford English Dictionary Online (3d ed.2012)). "Would" thus creates a requirement that the Plans meet the aforementioned publication standards. If the Plans do not ultimately meet these standards then they were never bona fide scientific research to begin with. CPW is required to do its due diligence on the front end and ensure to the maximum extent possible that, when it chooses to use snaring and rely on the bona fide scientific research exemption, the information that it gathers will be suitable for publication in a peer-reviewed journal. Defendants' current position that they can make this determination after animals are snared and killed is fundamentally inconsistent with their duty to assess the scientific rigor of the Plans before they are approved and implemented.

Instead of actually addressing whether the Plans would pass peer-review, CPW attempted to frame the Plans as recurrent, mundane actions that the Commission routinely approves by representing that the Plans were essentially the same as three other predator control plans that the Commission had approved in the last 5-6 years. See REC00251; REC6489 lines 5-17. This characterization of the Plans as "recurrent actions" was misleading because none of the previously

approved plans permitted snares or implicated Amendment 14. However, most importantly, the other previously approved plans are compelling evidence that CPW's predator control activities routinely fail to provide the scientific rigor needed to pass peer-review. When Commissioner Vigil asked CPW about these previous three predator control plans, CPW admitted that all three had either been inconclusive or had been discontinued due to study design problems. REC6619 line 3-6620 line 17. In short, the answer is that all three failed, which further draws CPW's study design here into question. Moreover, the Plans here are even less likely to provide useful information given that CPW is still conducting an ongoing, large-scale mule deer habitat improvement study in the Piceance Plan area. See REC02455. Because this habitat improvement will have an independent impact on the area's mule deer population, and because the study overlaps the Piceance Plan both geographically and temporally, it will bias any observations of the effects of both, further undermining the design of the Piceance Plan in any future peer review process. REC02455.

Not only did CPW refuse to address whether the Plans would meet the requirements for publication in a refereed scientific journal, but it directed the Commission not to consider this crucial issue either. These failures and the abundant record evidence indicating that the Plans will likely fail to meet those publication requirements are each additional, independent bases for the Court rejecting the Commission's approval of the Plans.

B. The Plans violate Defendants' fundamental missions to protect, preserve, and perpetuate wildlife, including cougars and bears, in Colorado.

In creating and approving these Plans, Defendants have failed to comply with their obligations to protect the public interest and to be good trustees of the wildlife resource. Defendants' enabling statutes and missions make clear that they must protect, preserve, and perpetuate wildlife for all of the people of Colorado, and the Legislature has explained that these duties are in the public interest. See C.R.S., § 33-1-101(1); C.R.S., § 33-1-106(1); C.R.S., § 34-60-102(1)(a)(IV). In order to comply with these requirements, the Commission may make a decision affecting wildlife populations only after it conducts an investigation and determines the action is "necessary to assure maintenance of adequate populations of wildlife or to preserve the proper ecological balance of the environment." C.R.S., § 33-1-106(1)(a). However, the Commission never made this determination before approving the Plans, and the Plans are fundamentally inconsistent with Defendants' wildlife conservation duties.

In contravention of the aforementioned directives, the Plans will involve an intensive cougar and bear killing campaign over a total of nearly 5,400 square miles of Colorado. See REC00635; REC00651. The Plans' heavy-handed cougar and bear killing regimes in localized areas will have serious, negative, long-term implications for these populations. See, e.g., REC02457-2458; REC02407 (harvest quota in year 1 for D-16 is nearly seven times the number of cougars killed in D-16 in 2005); REC00650 (CPW intends that killings will have a "significant impact on the density of cougars in the DAU…"). Yet Defendants failed to actually consider how these Plans would impact the "proper ecological balance of the environment" they are charged with protecting.

Moreover, the Commission approved these Plans despite CPW's admission that it has no location-specific estimates of cougar or bear population numbers for the Plan areas. REC00325; REC00328-329; REC00650; REC02457. How can CPW determine, for example, when 50% of the cougars in D-16 have been killed when it does not know how many cougars are in the area to begin with? The clear answer is that CPW cannot make this determination. More importantly, without these estimates Defendants cannot determine how killings under the Plans will harm these species. Defendants are thus not adequately protecting these species or ensuring the ongoing health of their populations in violation of their statutory mandates.

Instead of meaningfully considering the long-term harms to these cougar and bear populations that are sure to result from the Plans, CPW merely listed them without analysis and moved on. REC00648-649. For example, CPW admits that killing male cougars reduces population numbers and may reduce reproduction and that killing adult females is an even more significant driver of population declines. REC00647; REC00648. CPW also admits that hunters kill more females under heavy cougar killing regimes, such as the killing envisioned under the Plans, because hunters, who prefer to kill males, become less selective as cougars become scarcer. REC00648. Because 50-80% of female cougars stay in the area where they were born and a significant portion of young males also do not disperse from their birth ranges, local populations will not quickly recover from the killing under the Plans. REC00648. However, even if cougars were to immigrate into these areas post-implementation of the Plans, this could result in increased infanticide from subadult males, conflict between cougars, increased energetic demands on survivors, and decreased reproductive success. REC00648-649; REC00027

(deleted portion). These serious threats required real analysis, not a mere recitation of their existence. REC00648-649.

In an attempt to dismiss the aforementioned threats to these species without actually addressing them, CPW provides an arbitrary management measure. CPW states that it will manage threats to cougars and bears from the Piceance Plan by relocating trapped families at least 30 miles away from the Plan area. REC00636. However, CPW states "past research has indicated that for relocations to be successful, the relocation distance should exceed 300 miles and survival of relocated animals tends to be low." REC00407. Furthermore, killing any bears or cougars with dependent young would result in exponential harm, as this would cause orphaning of young who are dependent on their mothers well into the early years of their lives. REC02458. In addition to this arbitrary management measure, CPW says that it expects "a low number of family groups to occupy the relatively small area where predator reduction will occur." REC00325. CPW provides no factual support, citation, or analysis for this conclusory statement. This is also implausible as the killings under the Piceance Plan will occur entirely during the timeframe that Colorado voters banned bear hunting to protect dependent young. REC00392 (killings under Piceance Plan during May and June); C.R.S., §§ 33-4-101.3(1), (2) (hunting ban from March 1 to September 1 annually). CPW also omitted even this insufficient measure from the Upper Arkansas Plan. CPW thus effectively ignored this likely grave threat to impacted family groups and dependent young, and its attempt to use this measure to escape analyzing the real threats posed by its actions to cougars and bears under the Plans must fail.

The Plans also violate the Commission's procedural duty to determine that the

killings are necessary. See C.R.S., § 33-1-106(1)(a). CPW's characterization of the Plans as "studies" testing a hypothesis is internally inconsistent with the Commission's ability to determine that the killings under the Plans are necessary. See id. The Commission cannot have it both ways—concluding that the killings are necessary while simultaneously concluding that the Plans serve the purpose of determining if killings are necessary to boost mule deer numbers. The Commission accordingly failed to make the required necessity determination before approving the Plans and thus committed a procedural violation.

Finally, the Commission's own Mammalian Predator Management Policy requires that any proposed predator control plans address certain delineated issues before the Commission can approve them. REC00304. One of these is a requirement that a proposal detail "the criteria to determine when the proposal will be discontinued (both by failure and success)." Id. CPW entirely failed to include a provision for discontinuing the Plans due to failure. REC00393; REC00406-407. CPW instead only provides for ending the Plans when the proposed 3 and 9 year time periods have run. Id. The omission of a discontinuation due to failure requirement in the Plans is in contravention of the Commission's Policy, and is demonstrably necessary given that CPW's three most recent Commission-approved predator control plans were all failures. REC6619 line 3-6620 line 17.

VI. CONCLUSION

For the foregoing reasons, Guardians respectfully requests this Court declare the Commission violated Amendment 14 to the Colorado Constitution, its implementing legislation, and its duties to protect, preserve, and perpetuate wildlife for all of the people

of Colorado and to be a good trustee of the wildlife resource when it approved the Plans. Guardians further requests that the Court vacate the Commission's approval of the Plans.

Respectfully submitted this 14th day of August, 2017:

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CERTIFICATE OF WORD COUNT

I hereby certify that this brief is in compliance with the word count requirement of C.A.R. 28 and the Court's August 5, 2017 case management order. It is 9,415 words, as counted using the word count feature of Microsoft Word, excluding the caption, table of contents, table of authorities, signature blocks, certificate of word count, and certificate of service.

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CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2017 I submitted a true and accurate copy of the foregoing via ICCES for service upon the following:

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