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Colorado Parks and Wildlife Commission
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Re: Notice of Legal Deficiencies in July 2026 Meeting

Dear Chair Tutchton and Members of the Colorado Parks and Wildlife Commission:

Safari Club International ("SCI") and the Sportsmen's Alliance Foundation ("SAF") submit this letter to notify the Colorado Parks and Wildlife Commission ("Commission") of our significant concerns and potential legal action regarding the Commission's adoption of a daily bag limit of two furbearers for all legal species in Colorado. The Commission's decision is legally flawed and vulnerable to legal challenges under Colorado's Administrative Procedure Act.

LEGAL BACKGROUND

The Commission is "responsible for all wildlife management, for licensing requirements, and for the promulgation of rules, regulations, and orders concerning wildlife programs." Colo. Rev. Stat. § 33-1-104(1). The Commission may adopt or revise rules under the Colorado Administrative Procedure Act as necessary or convenient to fulfil its statutory duties. *Trinen v. Parks & Wildlife Comm'n*, No. 19CA0910, 2020 WL 14046626, at *1 (Colo. App. July 30, 2020) (citing Colo. Rev. Stat. § 33-9-102(2)).

The Colorado Legislature has not only empowered but **required** the Commission to "utilize hunting, trapping, and fishing as the primary methods of effecting necessary wildlife harvests." Colo. Rev. Stat. § 33-1-101(4). The Commission must further "develop, manage, and maintain sound programs of hunting, fishing, trapping, and other wildlife-related outdoor recreational activities." *Id.* § 33-1-104(2). The Commission is tasked with "provid[ing] full opportunity for

the hunter and fisherman to harvest the surplus wildlife resources on all state park and outdoor recreation areas wherever public safety can be maintained.” *Id.* § 33-10-106.

Moreover, the Commission must “provide an adequate, flexible, and coordinated statewide system of wildlife management and ... maintain adequate and proper populations of wildlife species” by determining “what amounts and numbers the wildlife of this state may be taken.” *Id.* § 33-1-106(a)(3).

Any person adversely affected or aggrieved by an agency action may obtain judicial review in any court of competent jurisdiction. *Id.* at § 24-4-106. An agency violates the Act when it fails to provide adequate process, as well as when it substantively violates another state law. *Colo. Office of Consumer Counsel v. Mtn. States Tel. & Tel. Co.*, 816 P.2d 278 (Colo. 1991); *see also Joseph v. Mieka Corp.*, 282 P.2d 509 (Colo. App. 2012) (“noncompliance with the statutory requirements for a rulemaking is fatal to an agency’s rule-making actions”) (quotation removed).

NOTICE OF DEFICIENCIES

1. Insufficient Public Notice

SCI and SAF object to the adoption of a two-furbearer bag limit because the public was not informed of such a low limit in any way prior to the Commission’s July meeting. Fair notice is fundamental to meaningful public participation. Colorado law requires an agency to publish notice before adopting a proposed rule and specifies what the notice must include. Colo. Rev. Stat. § 24-4-103(3)(a). The notice must give interested parties enough factual detail and explanation to understand the issues and offer meaningful comments. *Fedder v. McCurdy*, 768 P.2d 711 (Colo. App. 1988) (notice must be “clear, definite, explicit, and not ambiguous” and is not clear “unless the meaning can be apprehended without explanation or argument”). Although an agency does not need to predict every detail of the final rule, it must identify the proposal’s key elements and significant alternatives so the public can respond in an informed way. *E.g.*, *Sims v. Dep’t of Corrections & Rehabilitation*, 157 Cal. Rptr. 3d 409 (Cal. App. 2013) (finding agency failed to provide adequate discussion of alternatives impacting the public ability to participate in hearing).

The Commission’s May 29, 2026 notice in advance of the July 17, 2026 meeting gave the public two choices on which to comment: Alternative 1, a daily bag limit of 15 furbearers, and Alternative 2, a tiered approach with a daily bag limit of eight or four furbearers, depending on the species. The Commission instead adopted a limit of two—an 86.7% reduction from Alternative 1 and a 75% reduction from most of Alternative 2. Nothing in the notice suggested that any Commissioner was considering a uniform limit so far below either alternative. Because a daily limit of two furbearers falls well outside the range of the proposals provided to the public for consideration and comment, interested parties had no fair chance to comment on its practical, economic, enforcement, or conservation implications.

This deficiency in notice and change of course impacted SCI directly. As a partner in the Colorado Wildlife Conservation Project (“CWCP”), SCI signed on to a July 10, 2026 letter responding to the proposals described in the notice. That letter supported Alternative 1—the staff recommendation of a daily bag limit of 15 furbearers—as reasonable and enforceable. It also explained that Alternative 2, which would lower the daily limit to eight, offered no meaningful conservation benefit beyond the benefits expected from staff-recommended Alternative 1. SCI focused its comments on the alternatives the Commission placed before the public. If the notice had said the Commission was considering a uniform daily limit of two, SCI would have submitted substantive comments addressing that materially different proposal, including its practical effects on lawful hunting and trapping, its enforceability, and whether available conservation data supported such a steep reduction.

The Colorado Supreme Court has made clear that an agency must comply with the Administrative Procedure Act’s notice-and-comment requirements before adopting a binding rule. *See AviComm, Inc. v. Colo. Pub. Utils. Comm’n*, 955 P.2d 1023 (Colo. 1998). Those requirements are not satisfied when the final rule departs so far from the alternatives presented to the public in a way that deprives interested persons of a meaningful opportunity to address the agency’s ultimate action. *E.g., Fedder*, 768 P.2d at 714 (“notice did not set forth information reasonably necessary to provide adequate warning to all persons whose rights might be affected by the proposed action”); *Ore. Funeral Directors Ass’n v. Ore. State Mortuary & Cemetery Bd.*, 888 P.2d 104 (Or. App. 1995) (“[A]s a result of the notice, interested persons did not appear at the hearing and present their views to the agency.”). Here, a uniform daily limit of two was not a minor adjustment. It was a substantially different regulatory choice with substantially different consequences for the people subject to it.

A rule adopted without following Colorado’s Administrative Procedure Act’s required procedures is invalid. *Colo. Office of Consumer Counsel*, 816 P.2d at 286. Because the notice did not inform the public that the Commission might adopt a uniform daily bag limit of two furbearers, the Commission should not implement or enforce that limit. It should instead withdraw the action, publish a new notice that identifies the limit under consideration and explains its basis, give the public a meaningful opportunity to comment in writing and at a hearing, and reconsider the proposal through a rulemaking process that actually complies with the Act. The Administrative Procedure Act is enforceable through litigation, Colo. Rev. Stat. § 24-4-106; and SCI and SAF hereby give notice to the Commission that SCI and SAF are considering all legal options to enforce the Act and both organizations’ due process rights under Colorado law.

2. Insufficient Opportunity to Comment

Under Colorado’s Administrative Procedure Act, the Commission “shall afford interested persons an opportunity to submit written data, views, or argument and to present the same orally.” Colo. Rev. Stat. § 24-4-103(4)(a). Public comment allows interested parties the

opportunity to support or scrutinize an agency's proposals. This greater public participation ensures greater public confidence in the process. *E.g., Columba Riverkeeper v. Ore. Fish & Wildlife Comm'n*, 583 P.3d 319 (Ore. App. 2025) ("The notice and comment requirements are designed to confine agency discretion to ensure compliance with the rule of law by ensuring that all interested parties are heard in formulating the policies embodied in the rule and allows public scrutiny of agency policymaking and opportunities for input, thereby assuring greater public confidence in the process.") (cleaned up and citation omitted).

Here, the Commission took public comment on potential bag limits of 15 or eight furbearers. While public comment was ongoing, no Commissioner raised the possibility of a daily bag limit of two furbearers. This possibility was not introduced until well after public comment had concluded, and the Commissioners began to discuss the noticed proposals. At that point, Commissioner Niemiec offered a motion to amend the proposal to reduce the daily bag limits. Of course, her motion did not suggest reopening public comment, despite the substantive loss of harvest opportunity that she proposed.

Hunters and trappers are most directly impacted by the Commission's decision. They have the most knowledge of furbearer population data, harvest statistics, and conservation goals. Yet, they were not permitted to comment when the Commission dramatically changed course. Importantly, SCI and other members of CWCP supported a bag limit of 15 and were skeptical of a bag limit of eight. SCI's comments do not fairly or accurately reflect our staunch opposition of a bag limit of two. The fact the Commission noticed a completely different rule than what it adopted led to an incomplete record and a violation of SCI's and other commenters' due process rights under the Act.

In *Waste Management of Colorado, Inc. v. Colorado Department of Public Health and Safety*, the court found that allowing agencies to forgo comments after proceedings had begun "would give agencies free rein to make whatever modifications they desired after the proceedings were initiated without ever giving the [impacted party] an opportunity to comment," in violation of the Administrative Procedure Act's intent. *See* No. 22CA0476, 2023 WL 12052768 (Colo. App. Oct. 12, 2023). Here, as well, the Commission's failure to provide the public an opportunity to comment on the reduced bag limits is in violation of the Colorado Administrative Procedure Act. The public was deprived not only of the opportunity to comment in the weeks leading up to the meeting, but also for those who attended the meeting. SCI and SAF inform the Commission of this deficiency and hereby give notice to the Commission that SCI and SAF are considering all legal options to enforce the Act and both organizations' due process rights under Colorado law.

3. Violation of Colorado Revised Statutes

The Commission's decision to reduce bag limits so significantly also violates Colorado law requiring use of hunting and trapping "as the primary methods of effecting necessary wildlife harvests." Colo. Rev. Stat. § 33-1-101(4). The CPW Commission's legal obligations are to

“establish objectives within the state policy, as set forth in section 33-1-101, which will enable the division to develop, manage, and maintain sound programs of hunting, fishing, trapping, and other wildlife-related outdoor recreational activities. Such objectives shall employ a multiple-use concept of management.” *Id.* at § 33-1-104(2). Further, the Commission is tasked with “provid[ing] full opportunity for the hunter and fisherman to harvest the surplus wildlife resources on all state park and outdoor recreation areas whenever public safety can be maintained.” *Id.* § 33-10-106. Taken together, these directives require the provision of hunting opportunity for management, use, and recreational purposes. The Commission does not have authority beyond the statute and must do as the legislature commands. *Hawes v. Colo. Div. of Ins.*, 65 P.3d 1008 (Colo. 2003) (“As creatures of statutes lacking any independent constitutional pedigree, agencies cannot invoke some kind of inherent authority to justify actions that find no warrant in their enabling legislation.”) (citation omitted).

Yet Commissioner Niemiec, in proposing and supporting a two-furbearer bag limit, has eschewed these obligations and instead focused on her own social and moral judgments. She writes that ensuring hunting and trapping opportunities and sustained state-level populations of a species “are not the only outcomes that the public cares about with regard to wildlife management.”¹ Yet these are the very outcomes that Dr. Niemiec, as a member of the Commission, is tasked with considering and advancing. Her focus on other issues and values violates her obligations under the law. That the rest of the Commission went along with this abuse of responsibility reinforces the error of adopting a two-furbearer bag limit without full analysis, comment, or consideration.

SCI and SAF inform the Commission of this deficiency and hereby give notice to the Commission that SCI and SAF are considering all legal options to enforce the Act and both organizations’ due process rights under Colorado law.

4. Insufficient Opportunity to Address Inadequate Science and Factual Support

The Commission is required to act in a manner that is not arbitrary or capricious; in excess of statutory jurisdiction, authority, purposes, or limitations; based upon findings of fact that are clearly erroneous on the whole record; and unsupported by substantial evidence when the record is considered as a whole, among other things. Colo. Rev. Stat. § 24-4-106. The recalibration from a bag of limit 15 or eight to two triggers all of these violations—especially given the evidence in the record.

The most notable document in the record is a memorandum from professional Colorado Parks and Wildlife (“CPW”) staff addressing potential bag limits. This memorandum did **not** discuss or evaluate a bag limit of two furbearers. Rather, CPW first proposed a bag limit of 15

¹ Niemiec, Why I Advocated for a Bag Limit of 2 for All Furbearers in Colorado (July 31, 2026), available at <https://drbeckyniemiec.substack.com/p/why-i-advocated-for-a-bag-limit-of>.

applicable to all 17 furbearer species.² CPW selected 15 to “maintain the continuing social acceptance of the avocational take of furbearers and to minimize a change to harvest as there is no information that suggests reducing harvest is necessary to sustain adequate furbearer populations throughout their respective ranges in Colorado.”³ In fact, CPW explained its scientific management of furbearers in detail, as well as the population data on which it relies (consistent with the practice of state wildlife agencies), to address stated concerns from Commissioners. Although CPW staff provided an alternative bag limit of eight (at the request of some Commissioners), staff recommended the bag limit of 15. The recommendation was based on science indicating that current harvest estimates “are conservative, sustainable, and consistent with scientific literature.”

The Commission rejected this best-available science but had nothing to replace it. Accordingly, the Commission’s decision is arbitrary and capricious, in excess of statutory authority, based upon findings of fact that are clearly erroneous on the whole record, and unsupported by substantial evidence.

Moreover, the Commission relied on a back-of-the-envelope study that was not in the record—further violating the Administrative Procedure Act. Colorado law requires that, in compiling a rule-making record, an agency may not supplement the record with documents obtained outside of the proceeding. Specifically, an agency shall not introduce “evidence or information into the rulemaking record from outside of the public rule-making hearing ... without notice to all parties to such hearing and an opportunity to respond.” *Studor, Inc. v. Examining Bd. of Plumbers of the Div. of Registrations*, 929 P.2d 46 (Colo. App. 1996) (cleaned up).

Commissioner Niemiec did exactly this. She introduced a bag limit of two, arguing that doing so would “maintain social acceptance, to make sure people feel better about hunting and trapping furbearers and about our policy decisions,”⁴ and relied on a study that she conducted and that was not a part of the record.⁵ Commissioner Niemiec provided no prior notice, no opportunity for experts (including CPW staff) to evaluate the study, and no opportunity for members of the public, including SCI and SAF, to engage with and challenge the study’s methodology and

² CPW, Memo re Furbearer Bag Limits (July 1, 2026), available at https://cpw.state.co.us/sites/default/files/dam/c7dxyikp2n/item.12_memo_furbearerbaglimits_final_accessible.pdf.

³ CPW further explained its scientific management of furbearers in detail, as well as the population data on which it relies (consistent with the practice of state wildlife agencies), to address alleged concerns from Commissioners about whether its furbearer management was based on science. *Id.*

⁴ July 17 Commission Recording, available at <https://cpw.state.co.us/committees/colorado-parks-and-wildlife-commission/meetings/parks-and-wildlife-commission-meeting-49>.

⁵ Dr. Niemiec, et al., Colorado Public Perspectives on Furbearer Management, available at https://drive.google.com/file/d/14iBnLR6M63EgW0eWcymkcDeSPgAG_afX/view?pli=1.

conclusions. Colorado's Administrative Procedure Act does not permit this type of bait-and-switch.

Accordingly, SCI and SAF inform the Commission of these deficiencies and hereby give notice to the Commission that SCI and SAF are considering all legal options to enforce the Act and organizations' due process rights under Colorado law.

CONCLUSION

For the foregoing reasons, the Commission should not have adopted the reduction in daily bag limits. This decision was unlawful for a host of substantive and procedural reasons. **SCI and SAF respectfully demand that the Commission re-notice and reconsider the vote at the next Commission meeting.** The Commission should also promptly issue public notice that the two-furbearer bag limit will not take effect on September 1, 2026, and will not be implemented or enforced unless and until the legal deficiencies identified in this letter are resolved through the lawful rulemaking process.

This is a serious matter which must be addressed during a short limitations period and before the rule takes effect on September 1. Accordingly, **SCI and SAF request a response to this notice, and a decision as to whether the bag limit issue will be re-noticed and reconsidered at the next Commission meeting, by August 12, 2026.** We appreciate the Commission's prompt attention to this notice and request.

SCI and SAF request that the Commission's attorneys contact SCI's Legal Advocacy team at litigation@safariclub.org to discuss this letter and SCI and SAF's legal options at their earliest convenience.

Sincerely,



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