



# SOUTHERN UTE INDIAN TRIBE

April 11, 2023

Public Comment Processing  
Attn: Matt Hogan  
FWS-R6-ES-2022-0100  
U.S. Fish and Wildlife Service  
MS: PRB/3W, 5275 Leesburg Pike  
Falls Church, VA 22041-3803

Re: Comments on the Establishment of a Nonessential Experimental Population of the Gray Wolf in Colorado and associated draft Environmental Impact Statement.

Dear Mr. Hogan,

On behalf of the Southern Ute Indian Tribe (“Tribe”), I submit this letter to the United States Fish and Wildlife Service (FWS) to express the Tribe’s position on key issues in the proposed establishment of an experimental nonessential population of the gray wolf in Colorado under the 10(j) rule and the associated draft environmental impact statement (DEIS). In providing comments, the Tribe does not concede that the Endangered Species Act of 1973 (ESA) applies to tribal activities on reservation lands or tribal activities undertaken in the exercise of treaty reserved off-reservation hunting, fishing, and gathering rights. Our Ute people are the original and longest continuous inhabitants of what is now the state of Colorado and maintain historical as well as contemporary interests all over the state to this day. We request that our comments be strongly considered and included in the establishment of a nonessential experimental population of the gray wolf in Colorado and final environmental impact statement.

We agree that Alternative 1 which designates an experimental nonessential population under Section 10(j) of the ESA, is appropriate, and the preferred alternative under the DEIS. Alternative 1 allows management flexibility that could reduce potential impacts of wolves that occupy the reservation and Brunot Area. Additionally, Alternative 1 provides the tribes the ability to conduct wolf management as designated agents on lands under the tribe’s jurisdiction. Alternative 2, which requires the geographic division of gray wolves between *reintroduced wolves* and *already established wolves* is unreasonable, and unnecessarily complex. The non-action alternative does not provide management flexibility which is necessary for the successful reintroduction of gray wolves into Colorado. The Tribe strongly supports Alternative 1 designating all wolves in Colorado as an experimental nonessential population under the 10(j) rule.

We find positive differences between provisions in the proposed 10(j) rule and similar allowances referenced in Colorado Parks and Wildlife’s (CPW) Wolf Restoration and Management Plan. First, we appreciate that the proposed 10(j) rule allows for flexibility beyond what the state of Colorado would allow, including the taking of wolves “in the act of attacking” livestock without a permit or authorization from FWS. Second, we are encouraged to see that the definition of livestock under the proposed 10(j) rule is broader than what CPW recognizes and includes domestic bison as well as pigs, mules, and alpacas. Third, we are pleased to see that the safety of our pets is accounted for in the proposed 10(j) rule, and that wolves could be taken without FWS authorization, if in the act of attacking pets beyond livestock guard animals and working dogs. Fourth, we are in favor of the flexible reporting requirements in the proposed rule whereby opportunistic and intentional harassment of wolves will be reported to FWS within 7 days as

opposed to the 24-hour notification required by the state. We appreciate that the FWS can issue a written take authorization for limited duration of 45 days or less, where the state issues a limited duration permit only if state or federal agents are unable to implement lethal control actions. The less stringent 10(j) rules allow the Tribe to exercise self-determination and self-governance, which are paramount to our identity as a sovereign nation. Once delisted, we fully expect to exercise wolf management authority on tribal lands through a management plan.

Through the process leading up to reintroduction, we have held that the restoration of the gray wolf will present an unacceptable risk to our hunting resources. Therefore, we believe it is paramount that the lethal take of wolves be allowed if it can be scientifically proven that they are having an unacceptable impact on ungulate populations. We understand that the burden of proof should be high, but should the Tribe choose to invest in this type of research and can prove that ungulate populations are significantly impacted by wolves, we feel that lethal take should be an option. The Tribe should be able to take wolves to mitigate potential impacts to ungulate populations consistent with established tribal management objectives, if the tribe determines wolf interactions are a major driver of population declines. Access to ungulate species is extremely important to our Tribe; they are a food source and used for traditional and cultural practices. This issue is particularly important as it has implications to both on reservation and off reservation hunting rights. Additionally, the Tribe believes that wolf management options should include FWS removal of problem wolves from Tribal lands upon request. We look forward to developing an agreement with the FWS to address how our agencies can work together on wolf management issues.

Finally, we believe that the FWS should have ultimate authority over the initial release of gray wolves. Release sites should include a maximum buffer from tribal interests. Additionally, release sites should be limited to areas north of Interstate 70 to protect the genetically distinct Mexican gray wolf from contact with northern gray wolves which could have consequences ranging from conspecific predation to interbreeding. We also feel that the nonessential experimental population boundary should extend beyond the Colorado state boundaries into northern New Mexico, northern Arizona, and eastern Utah to allow 10(j) management flexibility for neighboring tribes who will be situated between two distinct, protected wolf populations.

We appreciate your commitment and willingness to work with the Southern Ute Indian Tribe. You may contact the Southern Ute Wildlife Division at (970) 563-2413 if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Melvin J. Baker".

Melvin J. Baker, Chairman  
Southern Ute Indian Tribe