

CITIZEN PETITION FORM

Date: 7.30.2024

Issue: The Colorado Parks and Wildlife (CPW) Commission Policy titled “Identifying and Managing Conflicts of Interest (Dated 5.6.2021) **Section V Implementation, (B) Disclosure to Commission, Paragraph 2**, (to be referenced in this document as “Section V (B), Paragraph 2”) is a violation of the following:

1. **Colorado Constitution Article XXIX (29), (1) Parts A through E.**
2. **CRS 24-18-108.5 (1) and (2).** See CRS 24-18-102 Definitions (1) (2) (4) (7) and (9).
3. **CRS 24-18-103. Public Trust- breach of fiduciary duty (1) and (2).** “For the benefit of the people of the state”.
4. **Current CPW Commission Policy, Identifying and Managing Conflicts of Interest (Section #IV and V). See also Section III - Definitions**

Per CRS-24-18-102 (9) the CPW Commission is a “State Agency” and thus should be treated as such according to the laws and constitution of the State of Colorado and applicable federal laws/rulings.

Like the recent Chevron Deference Supreme Court ruling, CPW Commission Policy Section V (B), Paragraph 2 appears to be an illegal “state agency” policy that violates CPW Commission policy, Colorado law/s, and the Colorado Constitution (as referenced above). This policy appears to illegally allow a CPW Commissioner who is a business owner or licensed big game hunting outfitter to vote in instances where they stand to gain personally on a financial / fiduciary basis. This appears to be a blatant violation of CRS **CRS 24-18-108.5 (1) and (2)** (defined below).

A breach of fiduciary duty happens when the fiduciary acts in the best interest of themselves or someone else, rather than the beneficiaries.

Additionally, this apparently illegal CPW Commission policy allows a licensed big game outfitter/CPW Commissioner to represent Outfitters Associations who stand to gain financially as well. When CPW Commissioners vote to sell a resident resource (limited big game hunting tags), to nonresidents, based on financial gain, versus serving the residents of Colorado, it becomes a conflict of interest and promotes the commercialization of a state resource (hunting). In this case, the CPW Commission is the executor of the trust, and the residents of Colorado are the sole beneficiary of that trust, nonresidents who receive a resident resource (big game hunting tags) are mere stake holders in this process, they are not to be served equally by state agencies.

A licensed big game outfitter that is a CPW Commissioner should also be recusing themselves or requested to do so by the other CPW Commissioners per current CPW Commission policy, when and if, the result of the Commission vote, could mean an increase of nonresident big game tag allocations, at the expense of beneficiaries of the trust (residents), tag allocations.

This self-recusal policy should also apply to any Subgroup or Working Group that the Outfitter/CPW Commissioner is a part of within CPW. If the CPW affiliated group votes to make any recommendations for big game tag allocations, that may affect the Commissioner on a personal financial basis to the CPW Commission or the CPW Staff, a recusal from voting should be required.

The historical result of the current Section V (B), Paragraph 2 Policy is reflected in Colorado’s current 75/25 limited big game tag allocation split (75% of limited big game license for residents / 25% for nonresidents). Nearly all other western states have a 90/10 big game tag allocation for their residents. No state treats its resident hunters worse than Colorado when it comes to big game limited license tag allocations.

***This CPW Commission policy matches the very defining of a “conflict of interest” and without a doubt carries the appearance of impropriety. Please see the Denver City Council rules on this matter. City of Denver --Conflicts of Interest. **Sec. 2-61. Conflict of Interest**

<p>Which rule are you seeking to create or revise? Please include a copy of the rule you are proposing to create or change, preferably with the change made in redline format.</p>	
<p>CPW Commission Rule/Policy to be repealed:</p> <p>CPW Commission Policy-Identifying and Managing Conflicts of Interest (Dated 5.6.2021) Section V (B), Paragraph 2, <i>“An official act that affects a group of industries or businesses does not, in and of itself, constitute an actual conflict of interest even though the Commissioner may work for or otherwise have an interest in one of the industries or businesses impacted by the official act.”</i></p>	
<p>Why are you seeking to create or revise this rule? Please include a general statement of the reasons for the requested rule or revision and any relevant information related to the request.</p>	
<p>Five reasons to remove the CPW Commission Policy-Identifying and Managing Conflict of Interest, Section V (B), Paragraph 2.</p> <p><u>#1 – It’s a violation of Colorado Constitution Article XXIX (29), Section 1, Parts A through E.</u></p> <p><u>Colorado Constitution Article XXIX (29), Section 1 Purposes and Findings:</u> The people of the state of Colorado hereby find and declare that: (a) The conduct of public officers, members of the general assembly, local government officials, and government employees must hold the respect and confidence of the people; (b) They shall carry out their duties for the benefit of the people of the state; (c) They shall, therefore, avoid conduct that is in violation of their public trust or that creates a justifiable impression among members of the public that such trust is being violated; (d) Any effort to realize personal financial gain through public office other than compensation provided by law is a violation of that trust; and (e) To ensure propriety and to preserve public confidence, they must have the benefit of specific standards to guide their conduct, and of a penalty mechanism to enforce those standards.</p> <p>This is reinforced by the following Legal Annotation and Research referenced within/below the recorded CC Article 29, Section 1 “ Appearance of impropriety can weaken public confidence in government and create a perception of dishonesty...”</p> <p><u>#2 – It’s a violation of CRS 24-18-108.5. (1) and (2). See CRS 24-18-102 Definitions.</u></p> <p><u>CRS 24-18-108.5. Rules of conduct for members of boards and commissions.</u> (1) Proof beyond a reasonable doubt of commission of any act enumerated in this section that the actor has breached his fiduciary duty. (2) A member of a board, commission, council, or committee who receives no compensation other than a per diem allowance or necessary and reasonable expenses shall not perform an official act which may have a direct economic benefit on a business or other undertaking in which such member has a direct or substantial financial interest.</p>	

CRS 24-18-102 Definitions (1) (2) (4) (7) and (9).

As used in this part 1, unless the context otherwise requires:

- (1) "Business" means any corporation, limited liability company, partnership, sole proprietorship, trust or foundation, or other individual or organization carrying on a business, whether or not operated for profit.
- (2) "Compensation" means any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another.
- (3) "Employee" means any temporary or permanent employee of a state agency or any local government, except a member of the general assembly and an employee under contract to the state.
- (4) "Financial interest" means a substantial interest held by an individual which is:
 - (a) An ownership interest in a business;
 - (b) A creditor interest in an insolvent business;
 - (c) An employment or a prospective employment for which negotiations have begun;
 - (d) An ownership interest in real or personal property
- (5) "Local government" means the government of any county, city and county, city, town, special district, or school district.
- (6) "Local government official" means an elected or appointed official of a local government but does not include an employee of a local government.
- (7) "Official act" or "official action" means any vote, decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.
- (8) "Public officer" means any elected officer, the head of a principal department of the executive branch, and any other state officer. "Public officer" does not include a member of the general assembly, a member of the judiciary, any local government official, or any member of a board, commission, council, or committee who receives no compensation other than a per diem allowance or necessary and reasonable expenses.
- (9) "State agency" means the state; the general assembly and its committees; every executive department, board, commission, committee, bureau, and office; every state institution of higher education, whether established by the state constitution or by law, and every governing board thereof; and every independent commission and other political subdivision of the state government except the courts.

#3 – It's a violation of CRS 24-18-103. Public Trust- breach of fiduciary duty (1) and (2). For the benefit of the people of the state.

CRS 24-18-103. Public Trust- breach of fiduciary duty

- (1) The holding of public office or employment is a public trust, created by the confidence which the electorate reposes in the integrity of public officers, members of the general assembly, local government officials, and employees. A public officer, member of the general assembly, local government official, or employee shall carry out his duties **for the benefit of the people of the state.**
- (2) A public officer, member of the general assembly, local government official, or employee whose conduct departs from his fiduciary duty is liable **to the people of the state as a trustee of property** and shall suffer such other liabilities as a private fiduciary would suffer for abuse of his trust. The district attorney of the district where the trust is violated may bring appropriate judicial proceedings on behalf of the people. Any moneys collected in such actions shall be paid to the general fund of the state or local government. Judicial proceedings pursuant to this section shall be in addition to any criminal action which may be brought against such public officer, member of the general assembly, local government official, or employee.

#4 – It's a violation of CPW Commission Policy (Effective May 6, 2021) Identifying and Managing Conflicts of Interest (# IV and V).

IV. POLICY STATEMENT

Serving on the Commission is a public trust, created by the confidence which the public reposes in the integrity of public officials. Commissioners shall perform their duties for the benefit of the people of the state, act in a fair and impartial manner, and avoid the appearance of impropriety.

V. Implementation

A. Self-Recusal

Commissioners must recuse themselves if they believe they have an actual conflict of interest as defined by CRS § 24-18-108.5(2).

Commissioners may also recuse themselves if they believe their participation would give rise to an appearance of impropriety.

Self-recusal should occur prior to any substantive discussion on an action item or as soon thereafter as the Commissioner perceives an actual conflict of interest or appearance of impropriety. The Commissioner need not disclose the legal or factual bases for their recusal. After recusing themselves, the Commissioner must not participate in the proceeding in any way, including deliberations.

CPW Commission Policy, Identifying and Managing Conflicts of Interest, Section I. Purpose. The purpose of this policy is to assist voting members of the Commission in identifying and managing conflicts of interest as required by the Colorado Code of Ethics, §§ 24-18-101—113, CRS (Code).

CPW Commission Policy, Identifying and Managing Conflicts of Interest Section III. Definitions

A. “Conflict of interest” means a situation where a Commissioner’s personal interest is incompatible with a Commissioner’s public duty. Voting members of the Commission shall not perform an official act which may have a direct economic benefit on any business, including nonprofits, in which such member has a direct or substantial financial interest. CRS § 24-18-108.5(2).

B. “Financial interest” means 1) an ownership interest in any business; 2) a creditor interest in an insolvent business; 3) an employment or a prospective employment for which negotiations have begun; 4) an ownership interest in real or personal property; 5) a loan or any other debtor interest; or 6) a directorship or officership in any business. CRS § 24-18-102(4).

C. “Official act” or “official action” means any vote, decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority. § 24-18-102(5), CRS.

D. “Appearance of impropriety” means an official act that would lead a reasonable person to conclude the Commissioner has engaged in conduct that reflects adversely on the Commissioner’s honesty, impartiality, temperament, or fitness to serve the public trust. An appearance of impropriety may exist even though the facts and circumstances of the matter do not constitute an actual conflict of interest as defined by CRS § 24-18-108.5(2) above.

#5 - Violation– “Appearance of Impropriety” as defined in the details above.

Commissioners may also recuse themselves if they believe their participation would give rise to an appearance of impropriety.

Final Notes: During the June 12, 2024 CPW Commissioner meeting, see time 4:16:10 on Day 1 - YouTube video. You will hear the attorney for the CPW Commission declare that CRS 33-9-101 (3) requires an Outfitter be on the CPW Commission Board. He is 100% correct and no one has ever challenged that. However, nowhere in Title 33-9-101 does it say a CPW Commissioners can violate the state laws referenced above or the Colorado Constitution when they vote, especially when they stand to gain financially for that official act. The CPW Commissions Attorney never makes mention of CRS § 24-18-108.5(2) or the appearance of impropriety that is so obvious to every resident of Colorado. The CPW Commission Attorney **does** quote the very CPW Policy that I have asked to be repealed as the only justification that allows a CPW Commissioner who is also a licensed Outfitter or business owner to be able to vote for the good of an industry (financial). In the video, the Commissions attorney never says it’s ok for a CPW Commissioner to vote when they stand to gain personally / financially from that official act. This is likely because it’s an obvious violation of state law. In the video, the CPW Commission Attorney also declared that the CPW Commissioners serve the residents and visitors of Colorado, but he forgot to tell the Commission that the CPW Policy Statement reads as follows “*Serving on the Commission is a public trust, created by the confidence which the public reposes in the integrity of public officials. **Commissioners shall perform their duties for the benefit of the people of the state, act in a fair and impartial manner, and avoid the appearance of impropriety.***”

It should also be noted that a random visitor in Colorado is not a stakeholder, when it comes to resident resources, such as big game hunting licenses. A nonresident hunter, who spends hundreds of dollars for the right to harvest a resident resource (deer/elk), is a stakeholder. However, The CPW Commission serves the beneficiaries of the trust, and in all 50 states, only residents are beneficiaries of that trust.