

Colorado Court of Appeals 2 East 14th Avenue Denver, Colorado 80203	DATE FILED March 27, 2026 4:56 PM
Appeal from: District Court, City and County of Denver; District Court Case Number: 2023CV32544; District Court Judge: Hon. Christopher J. Baumann	
Appellants: FRIENDS OF ANIMALS, RIVER RUNNERS FOR WILDERNESS, AND LIVING RIVERS, v. Appellees: COLORADO PARKS AND WILDLIFE COMMISSION AND DIVISION OF PARKS AND WILDLIFE	
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APPELLEES' ANSWER BRIEF	

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/s/Christopher R. Stork

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Appellants seek reversal of the district court’s decision upholding the Colorado Parks and Wildlife Commission’s (“Commission”) rulemaking concerning the use of State Wildlife Areas (“SWAs”), codified at 2 Colo. Code. Regs. § 406-9 (“Regulations”). The issues are:

- I. Was the Commission’s adoption of the Regulations a reasonable exercise of its statutory powers?
- II. Did the Commission comply with Section 24-4-103(4)(a), C.R.S. (2025)¹ by receiving and considering all oral and written public comments in the manner specified in three formal notices of rulemaking?
- III. Did the Commission have a duty under Section 24-4-103(8.1)(b)(III) to include submissions and comments regarding the Regulations received by the Division of Parks and Wildlife (“Division”) – but not presented to or considered

¹ All citations to the Colorado Revised Statutes refer to the 2025 versions.

by the Commission – in the administrative record and, if yes,
was the Commission’s failure to do so here harmless error?

I. RELEVANT FACTS AND PROCEDURAL HISTORY

A. Overview of SWAs

In addition to its parks related duties, the volunteer Commission manages wildlife in the state and is responsible for adopting rules that will enable the full-time staff of the Division to “develop, manage, and maintain sound programs of hunting, fishing, trapping, and other wildlife-related outdoor recreation.” § 33-1-104(1), (2). CPW refers to the Division and Commission, collectively. CPW’s wildlife responsibilities are codified in articles 1 – 8 of title 33, and its parks responsibilities are codified in articles 10 – 15.²

To carry out its varied responsibilities, CPW manages properties for different purposes and acquires them with different funding streams. *See* §§ 33-1-112 (creating wildlife cash fund); 33-10-111

² Prior to 2011, the wildlife commission and parks board, and their affiliated divisions, were separate entities with separate missions. S.B. 11-208 merged these entities through article 9 of title 33, which codifies CPW’s revised, multi-faceted mission at Section 33-9-101(12)(b).

(creating parks and outdoor recreation cash fund). Some properties are devoted to general outdoor recreation. “State parks,” for example, are areas with “outstanding scenic and natural qualities” that CPW preserves “for the enjoyment, education, and inspiration of residents and visitors.” § 33-10-102(23). Similarly, “state recreation areas” are intended to offer “a broad range of outdoor recreational opportunities.” § 33-10-102(24).

By comparison, SWAs are, by definition, reserved for wildlife habitat and wildlife-related recreation. § 33-1-102(42) (SWAs are “for the benefit of wildlife populations or for wildlife-related recreation”). This appeal concerns the Commission’s policy choices regarding the proper level of wildlife-related recreation and general recreation at SWAs.

CPW manages over 300 SWAs. *See* 2 Colo. Code Regs. § 406-9:901 (listing 281 SWAs with property specific rules); 2 § Colo. Code Regs. 406-9: App. B (listing 36 SWAs without property specific rules that are only subject to the general provisions in 2 § Colo. Code Regs. 406-9:900). The primary purposes of SWAs are to conserve wildlife and wildlife

habitat. CF, p.206-208 (Division memorandum to Commission prepared for rulemaking). An additional benefit is providing areas for wildlife-related recreation, namely “hunting, fishing, and wildlife watching.” *Id.* Consistent with CPW’s longstanding SWA Policy, such properties can also provide opportunities for general recreation – such as camping, picnicking and hiking – but only when such activities are supportive of, incidental to, and compatible with wildlife-related recreation. *Id.* at 104-105 (CPW SWA Policy); 198, TR-3/15/23, p.3:4-12 (Wildlife Officer and Area Wildlife Manager Mark Lamb testimony regarding SWA Policy’s goal of avoiding impacts from general recreation); 299, TR-5/4/23, p.3:2-8 (Officer Lamb testimony regarding SWA Policy).

SWAs are purchased primarily with revenue generated from the sale of hunting and fishing licenses and related fees (such as the habitat stamp fee imposed under Section 33-4-102.7) and federal matching funds under the Pittman-Robertson Wildlife Restoration Act, 16 U.S.C. § 669 *et seq* (“PR”) and Dingell-Johnson Sport Fish Restoration Act, 16 U.S.C. § 777 *et seq* (“DJ”). The PR and DJ statutes impose excise taxes on firearms, ammunition, and archery equipment and fishing

equipment and motorboat fuel, respectively. *See* CF, pp.206, 193 (Division memorandum and presentation discussing funding sources for SWAs); 302, TR-5/04/23, p.13:1-9 (Regional Manager Travis Black testimony stating CPW “generally acquires” SWAs using Section 33-4-102.7 habitat stamp funds); §§ 33-1-117, 118 (assenting to PR and DJ acts and limiting use of federal funds).

If CPW “purchases real property for use as a wildlife area with any federal aid monies, the property must continue to be used as a wildlife area.” *Sportsmen's Wildlife Def. Fund v. Romer*, 29 F. Supp. 2d 1199, 1204 (D. Colo. 1998). If unauthorized use occurs, the federal government may find that a “diversion” of PR or DJ funding has occurred and require CPW to regain management control of the lands at issue, replace the lands with equivalent lands, or repay funds. 50 C.F.R. §§ 80.135, 80.136; *see Sportsmen's Wildlife Def. Fund v. U.S. Dep't of Interior*, 40 F. Supp. 2d 1192, 1196-99 (D. Colo. 1999) (discussing diversion of funds by CPW); *see also* CF, p.451 (noting that Woods Lake SWA was “purchased to maintain compliance with DJ Federal Aid and must be managed for fishing access.”).

The SWA Policy and the Regulations are intended to ensure that CPW complies with federal funding requirements – and therefore Sections 33-1-117 and 118 – by allowing general recreation on SWAs only where it will not adversely impact wildlife, wildlife habitat or wildlife-related recreation or raise the costs of managing the property. CF, pp.104-105 (SWA Policy); 198, TR-3/15/23, p.3:4-12 and 299, TR-5/04/23, p.3:2-8 (Officer Lamb testimony on policy).

B. The Commission’s rulemaking authority and the rulemaking

The Commission has rulemaking authority, but the Division does not. §§ 33-1-104(1); 33-9-103

(3). The Commission is responsible for adopting rules regarding wildlife management, § 33-1-104(1), and must adopt rules it deems “reasonably necessary for the administration, protection, and maintenance of” SWAs. *Id.* § 107(1)(a). The Commission has authority to adopt rules that restrict or prohibit the use of SWAs, including rules limiting the “time, manner, permitted activities, or numbers of people.” *Id.* § 107(1)(b). Additionally, the Commission “may adopt or revise any

rules ... that the commission deems necessary or convenient to effect the purposes of, and fulfill its duties....” § 33-9-102.

The Commission adopted the Regulations in 2023 in response to the overuse of SWAs and the resulting negative impacts on wildlife, wildlife habitat and wildlife-related recreation. CF, pp.206-208 (Division memo), 198, TR-3/15/23, pp.2:23-3:3 (Officer Lamb testimony regarding observation of “big increase in ... all kinds of recreation”); 299, TR-5/04/23, p.2:21-24 (same). The Regulations generally restrict what activities may occur at SWAs and when, and provide property specific exceptions where appropriate. *Id.* at 1115-1215 (adopted Regulations).

The Regulations were the product of a yearslong process involving diverse stakeholders. *Id.* at 196 (timeline), 418, 420, TR-6/22/23, pp.10-12, 19-20 (hearing testimony describing four-year process), 427-430 (stakeholder letter regarding development of SWA Pass in 2021). In 2019, Division supervisors – commonly referred to Area Wildlife Managers – began examining the overuse of SWAs in consultation with other CPW staff. *Id.* at 206. This involved identifying the negative

impacts associated with the use of SWAs and attempting to identify solutions. *Id.* The next phase began in 2020 with the establishment of a stakeholder working group. *Id.* This group included members from various backgrounds, including three members of the Commission and members of various external groups. *See* § 24-4-103(2) (requiring agencies to establish representative groups that may be affected by a rulemaking); CF, p.299, TR-05/04/23, p.3:14-23 (testimony discussing groups included), 855 (group list). The volunteer working group met seven times over the course of two years. *Id.* at 856.

The working group reviewed a tier system that the Division developed to identify appropriate restrictions for each tier of SWAs. CF, 299-300, TR-5/04/23, pp.4:21-25, 5:1-10 (Officer Lamb testimony). The tier system categorized every SWA into four tiers ranging from tier 1—those that are extremely important to wildlife—to tier 2 and 3—properties important for wildlife that could sustain increased types of recreation to some degree. *Id.* at 443-444. And lastly, tier 4—properties with little importance to wildlife that could support more general recreation. *Id.* at 444-445.

The working group reviewed how the Division defined each tier and how the Division assigned each SWA into a tier. The group also reviewed the Regulations’ proposed general provisions and developed property specific exceptions to the general provisions. CF, pp.443-452 (memorandum regarding the tier system); 199, TR-3/15/23, p.5:1-6 (describing group’s review); 300, TR-5/04/23, p.5:6-10 (Officer Lamb testimony describing role and importance of working group).³

In 2023, the Commission entered the rulemaking phase for the Regulations. The Commission published three notices of proposed rulemaking. The notice for the March meeting states:

The public is encouraged to comment before the meeting by submitting written comments to the Commission’s email address at: dnr_cpwcommission@state.co.us. ... Written alternate proposals, data, views or arguments and other written statements should be e-mailed to dnr_cpwcommission@state.co.us.

³ This property specific approach was CPW’s response to a stakeholder’s suggestion. CF, p.429 (“During the development of the SWA pass [in 2021], American Whitewater asked for a site-specific look at properties to better determine what sort of restriction on use was appropriate. We are pleased to report that was done and this process also includes a proposal of site-specific provisions.”).

CF, pp.97, 100.

The notice for the May meeting states:

The public is encouraged to comment before the meeting by submitting written comments to the Commission.

- Comments regarding wolves should be submitted through <https://engagecpw.org/comment-form>.

- Comments not regarding wolves should be sent to dnr_cpwcommission@state.co.us. ...

Written alternate proposals, data, views or arguments and other written statements should be e-mailed to dnr_cpwcommission@state.co.us.

Id. at 202, 204.

The notice for the June meeting was the same as for the March meeting and did not refer to EngageCPW or wolves. *Id.* at 409, 410.

The Commission received written public comments via email as directed in the notices. *Id.* at 294-296 (May meeting cover memorandum and comments), 423-442 (June meeting cover memorandum and initial batch of comments, including comments from FoA), and 575-579 (June meeting cover memorandum and final batch of comments).⁴ The

⁴ At some point CPW also issued a press release encouraging the public to comment on the Regulations via EngageCPW, stating “The public can ... provide feedback on EngageCPW.... Comments will be reviewed by

Commission also received oral public comment at the rulemaking hearings, including from counsel for Appellant Friends of Animals (“FoA”) *Id.* at 416-417, TR-6/22/23, pp.3-8.

As required by Section 24-4-103(4)(c), the draft and final Regulations included a statement of basis and purpose (“Statement”) explaining the reasons for the Regulations and the Commission’s statutory authority to adopt them. *Id.* at 1207-1215 (adopted Statement). The Statement notes that federal funding restrictions require CPW to maintain “control” of SWAs by prohibiting uses that are inconsistent with conservation of wildlife and wildlife habitat. *Id.* at 1207. The Statement notes that a dramatic increase in SWAs in recent years has negatively impacted wildlife and wildlife-related recreation. *Id.* See also *id.* at 302, TR-5/04/23, p.14:17-19 (testimony from working group member stating CPW has incurred “around \$7.5 million of

CPW staff and considered by the Parks and Wildlife Commission.” CF, p.645. Although the Division provided a memorandum summarizing the EngageCPW comments, individual comments were not presented to or considered by the Commission. As discussed in Section II below, this irregularity does not warrant Appellants’ desired relief.

negative impacts on maintenance on [SWAs]”). In order to combat this trend, and as stated in the Statement, the Commission “modified regulations to protect the wildlife and wildlife habitats found on these lands [SWAs].” *Id.* at 1207. The Statement provides rationales for restrictions on numerous SWAs. *Id.* at 1207-1214.

The Commission unanimously adopted the Regulations in June 2023. *Id.* at 421, TR-6/22/23, p.24:19-25. The Commission’s nonconsumptive wildlife representative, Commissioner Jay Tutchton, praised the new rules, stating they were a “really good comprehensive approach ... this is a great first effort.” *Id.* at 419, TR-6/22/23, p.13:4-24 (noting that he was a “nonconsumptive” representative appointed under Section 33-9-101(3)(a)(III), meaning he doesn’t hunt, fish or trap); *see also* § 33-9-101(3) (describing varying qualifications of members of the Commission).

C. This lawsuit

Appellants sued CPW claiming the Regulations violated the State Administrative Procedures Act (“APA”). The District Court disagreed

and issued an order upholding the Regulations. CF, pp.1096-1114. The District Court found that, “[b]ased on the plain language of C.R.S. § 33-1-107, Defendants are authorized to limit or outright prohibit activities in lands and waters under their control where such regulations are reasonably necessary for the administration, protection, and maintenance of such areas. There is no limitation on which sorts of activities Defendants may restrict....” *Id.* at 1104. The District Court also rejected Appellants’ arguments regarding the record and the APA, finding that CPW substantially complied with the APA. *Id.* at 1110-1114.

D. Ruling, Judgment, or Order Presented for Review

Appellants appeal the District Court’s order dated October 21, 2025. CF, pp.1096-1114.

SUMMARY OF ARGUMENT

CPW determined that a dramatic uptick in general recreation was adversely affecting SWAs, so it adopted the Regulations. The Regulations are the result of a comprehensive effort that included

convening a stakeholder working group, § 24-4-103(2), and providing multiple notices of the anticipated rulemaking and hearings and opportunities to comment. CF, pp.97, 202, 409; *see* § 24-4-103(4)(a). In addition, the Commission engaged in significant public outreach. CF, pp.935-957. Following these actions, the Commission properly considered public comments and voted unanimously adopted the Regulations. *Id.* at 421, TR-6/22/23, p.24:19-25

The Regulations reflect individualized policy judgments as to the proper level of wildlife-related recreation and general recreation at SWAs, are supported by the record and are within the Commission's statutory authority to, among other things, adopt rules that are reasonably necessary for the protection of SWAs. The Regulations reasonably restrict certain activities to protect wildlife and wildlife habitat and, where appropriate, allow for suitable recreation. *Id.* at 1115-1215 (adopted Regulations). Appellants, however, disagree with these conclusions and attempt to demonstrate – through the use of colorful hypotheticals and language– that CPW unlawfully favors

hunters and anglers. Appellants' claims are legally incorrect and factually unsupported.

Appellants claim CPW violated Section 24-4-103(4)(a) of the APA because Division staff provided a memorandum to the Commission summarizing public comments received via EngageCPW, instead of providing each comment. CF, pp.305-307 (memorandum summarizing EngageCPW comments). Appellants are wrong because it is undisputed that the Commission received and considered every written public comment that was submitted in the manner specified in three formal notices of rulemaking, including from FoA.

Appellants also claim that CPW violated Section 24-4-103(8.1)(b)(III) because the Division (an agency with over 1,000 full time employees) did not provide all submissions and comments it received regarding the Regulations to the Commission (a separate volunteer agency appointed by the Governor) for inclusion in the rulemaking record. *See* §§ 33-9-101, -104. Appellants' argument falters by conflating the Division and Commission and misinterpreting "agency" as used in Section 24-4-103(8.1)(b)(III). As applied here,

“agency” necessarily refers to the Commission because it has rulemaking authority and the Division does not. §§ 33-1-104(1); 33-9-103(3).

Moreover, to the extent the Court determines that CPW violated either of the APA provisions at issue, any error was harmless because Appellants were not prejudiced. FoA actively participated in the rulemaking, providing oral and written comments that mirror Appellants’ current contentions. *See* CF p.417, TR-6/22/23, pp.6:5-8:8 (FoA oral comment); 431-439 (FoA letter). Other comments in the record are substantially similar to the EngageCPW comments at issue, meaning Appellants were not prejudiced by the exclusion of cumulative comments. *See, e.g., id. at* 425-430. (organizational comments advocating for “casual recreation in addition to hunting and fishing” on SWAs). The Court should enter an order rejecting Appellants’ APA challenge and affirm the District Court’s finding that the Commission substantially complied with the APA.

ARGUMENT

I. The Regulations reflect a reasonable policy judgment within the Commission's statutory authority and are supported by the record.

A. Standard of Review and Preservation of Issue

CPW agrees that Section 24-4-106(7) provides the applicable standard of review. *Farmer v. Colo. Parks & Wildlife Comm'n*, 382 P.3d 1263, 1267 (Colo. App. 2016). This Court reviews questions of law *de novo* and reviews the Regulations for reasonableness. *Id.*; *Colo. Ground Water Comm'n v. Eagle Peak Farms, Ltd.*, 919 P.2d 212, 217 (Colo. 1996). This issue was preserved. CF, pp.1076-83.

B. The Regulations are the result of a reasonable policy judgment.

Judicial review of rulemaking varies depending upon where a regulation falls on the policy – factual continuum. *Citizens for Free Enter. v. Dep't of Rev.*, 649 P.2d 1054, 1064 (Colo. 1982). Some rulemakings are founded on policy choices about how to effectively implement statutory purposes, rather than factual determinations capable of definitive proof. *Id.*; *Regular Route Common Carrier*

Conference v. PUC, 761 P.2d 737, 743 (Colo. 1988). Many regulations involve a combination of factual findings and policy choices and “the nature and scope of judicial review” is tailored depending on which is predominant. *Citizens*, 649 P.2d at 1064. When evaluating predictive determinations or policy choices inherent in a rule, more deference is appropriate and the court’s role “is to assure that the regulation is the product of reasoned decision-making fairly defensible in light of the material before the agency and its latitude in the resolution of policy matters.” *Id.* at 1065. Agency rules are presumed valid and the burden is upon the challenging party to establish their invalidity by demonstrating that the rulemaking body acted in an unconstitutional manner, exceeded its statutory authority, or otherwise acted in a manner contrary to statutory requirements. *Regular Route*, 761 P.2d at 743.

Here, the District Court found that the Regulations were “based primarily on policy considerations,” CF, p.1081, because they relate to the “effective implementation of a statutory purpose” *Regular Route*, at 743. Specifically, the Regulations effectuate Section 33-1-

102(42)’s conceptual mandate that SWA be managed “for the benefit of wildlife populations or for wildlife-related recreation.” To accept Appellants’ position – that the proper regulation of each SWA turns on “controverted questions of fact,” *Regular Route*, at 743 – would be an unjustified limit on the Commission’s latitude to define what type of recreation is appropriate at SWAs and present an enormous administrative burden on CPW.

Here, the policy choices reflected in the Regulations are informed by CPW staff expertise. CPW staff observed negative impacts to wildlife, wildlife habitat, and wildlife-related recreation due to overuse of SWAs. CF, pp.206-208 (Division memorandum); 198, TR-3/15/23, pp.2:21-3:3 (Officer Lamb testimony regarding observation of “big increase in ... all kinds of recreation”); 299, TR-5/04/23, p.2:21-24 (same). To address these impacts, CPW developed time, place and manner restrictions – both through the general provisions and property specific exceptions – governing the permissible use of SWAs under Section 33-1-107, C.R.S. (titled Regulation of areas under wildlife commission control). These restrictions reflect CPW’s best effort to

balance numerous – sometimes competing – statutory considerations, such as preserving and protecting wildlife and their environment *and* providing the greatest possible variety of wildlife-related recreational opportunities. *See* §§ 33-1-101(1) and 33-9-101(12)(a)(III) (describing policy of the state).

In addition to the external, visitor-focused policy considerations mentioned above, the Regulations also reflect CPW’s best effort to regulate the use of SWAs while managing its own limited resources. This was an appropriate consideration for CPW because it is charged with the “administration, protection, and maintenance” of SWAs. § 33-1-107(1). CPW’s longstanding SWA Policy, CF, pp.104-105, recognizes the importance of such practical considerations, stating that general recreation activities, like dog walking and paddle boarding, often “raise the cost of property maintenance / management or create a need for facilities or manpower . . .”, *id.* at 104. CPW’s desire to keep the management of SWAs “relatively consistent” across the state, *id.* at 195, and its reliance on the SWA Policy to interpret 33-1-102(42)’s definition of SWA – and in particular its use of the discretionary phrase “for the

benefit of wildlife populations or for wildlife-related recreation” – are entitled to deference. *See id.* at 198, TR-3/15/23, p.3:4-12; 299, TR-5/04/23, p.3:2-8 (Officer Lamb paraphrasing policy and expressing working group’s reliance on policy); *see also*, *Colo. State Pers. Bd. v. Dep’t of Corr.*, 988 P.2d 1147, 1151 (Colo. 1999) (an agency's reasonable interpretation of its statute that lightens its workload and makes its decision-making process more efficient is entitled to deference).

Appellants disagree with the Commission's policy decisions. During the rulemaking, FoA encouraged CPW to consider various alternatives, including a no action alternative relying on “[m]ore signs and law enforcement presence” at SWAs. CF, 438 (FoA comment letter). But each of Appellants’ proffered alternatives cost money and turn on differing policy considerations about which reasonable minds can (and do) differ.

The Commission is entrusted with the responsibility to adopt policies reflecting a “multiple-use concept of management,” § 33-1-104(2), and the Regulations are consistent with the broad and discretionary statements of policy in the relevant statutes. *See, e.g.*, §

33-1-107(1)(a), (b) (Commission has power to adopt rules as are “reasonably necessary” to safeguard SWAs). Although Appellants disagree with the Commission’s policy choices, that disagreement does not justify vacating the Regulations. *Regular Route*, 761 P.2d at 743 (an “agency can choose to reject any adverse submissions and adopt the proposed rule” as long as there is a reasonable basis in the record).

Appellants dispute that the Regulations involve a policy judgment, Opening Br. at 27, arguing that the dramatic increase in the use of SWAs and resulting negative impacts observed by Division field staff can be quantified and, as a result, the Commission was required to further support its decisions with “discrete fact[s] capable of demonstrable proof.” *Citizens*, 649 P.2d at 1064. Appellants’ position is flawed for two reasons.

First, as detailed below, Appellants ignore the detailed support in the record, including the tier system, its rankings, the numerous property specific exceptions and related staff testimony. Second, they are simply incorrect that more granular proof was required for over 300 unique SWAs. The Commission made reasonable policy judgments

about what activities are generally compatible with SWAs and developed a host of property specific exceptions based upon the unique needs of particular properties. Nothing more was required.

C. The Commission's policy decisions are supported in the record.

Regulations reflecting policy judgments within the agency's expertise are reviewed with deference. *City of Aurora v. Pub. Utilities.*, 785 P.2d 1280, 1287 (Colo. 1990). While the agency must provide a rational basis for the action, it need not resolve every objection in order to adopt such a proposed rule. *Id.* The Court's role is to evaluate whether the regulation is "defensible in terms of the agency's statement of basis and purpose, and with reference to the administrative record." *Citizens*, 649 P.2d at 1063. These requirements are satisfied here.

The Division memorandum and Officer Lamb's testimony establish a rational basis for the Regulations. CF, pp.206-208; 198, TR-3/15/23, pp.2:23-3:3; 299, TR-5/04/23, p.2:21-24. The memorandum, drafted by CPW's regulations manager and four Area Wildlife Managers with in-depth experience, stated that dramatic increase in

use has negatively affected wildlife and wildlife-related recreation. *Id.* at 206. Officer Lamb further testified that CPW staff's day-to-day observations and input from visitors was relied on to develop the Regulations, stating "all that is factored into when we do our jobs. So it's that professional knowledge that we use to try to make these decisions and changes." *Id.* at 421, TR-6/22/23, p.21:9-15. Additionally, Officer Lamb emphasized that information from CPW staff reflects public concern, as CPW staff are "always out talking to users, whether they're hunters, fishermen, or other users, and [staff] use that professional knowledge and input from the public to see what [CPW] needs to do to adjust wildlife areas and management or even new regulations." *Id.* at 420, TR-6/22/23, p.20:7-13.

The tier system and the Division's collaborative effort to assign each SWA into a tier in consultation with the working group also establish a rational basis for the Regulations. *Id.* at 199, TR-3/15/23, p.5:1-6 and 299-300, TR-5/04/23, pp.4:21-25, 5:1-10 (Officer Lamb testimony regarding development of tier system and working group's review); *id.* at 443-445 (memorandum regarding tier system); 855-856

(list of working group participants and affiliations and meeting dates).

In particular, the “Rationale for Rating” each SWA, *id.* at 446-451, shows CPW engaged in an individualized assessment for each property, noting such things as “Lots of paddleboarding” and “Good big game habitat but is diminished by general recreation” and “Private lease hunting (big game and small game) and fishing only.” *Id.*

The Commission’s desire to safeguard federal funding establishes a rational basis for the Regulations. *Id.* at 206-208 (Division memorandum stating “[b]ecause SWAs are acquired using federal funds, if the U.S. Fish and Wildlife Service determines that a state agency has ‘lost control’ of a property by allowing non-compatible uses, the state agency is required” to take remedial action.); §§ 33-1-117, 118, C.R.S. (assenting to PR and DJ acts and limiting use of funds).

The Commission’s desire to ensure that SWAs purchased with habitat stamp funds remain consistent with the purposes of the habitat stamp statute establishes a rational basis for the Regulations. CF, p.302, TR-5/04/23, p.13:1-9 (CPW “generally acquires” SWAs using such funds); § 33-4-102.7(1)(c) (“Priorities for the expenditure of funds

generated from the sale of habitat stamps shall include ... acquiring public access to wildlife-related recreation, including fishing, hunting, and wildlife viewing...”). The Regulations are well supported by the record and Appellants’ demand for more is inconsistent with Colorado law.

Appellants rely heavily on *Citizens for Free Enter. v. Dep’t of Revenue*, 649 P.2d 1054, 1064 (Colo. 1982) and *Safe Extensions v. Federal Aviation Admin.*, 509 F.3d 593 (D.C. Cir. 2007) to argue that the Commission was required to develop additional facts here. But *Citizens* supports CPW’s position and *Safe Extensions* is a fact-based adjudication.

Citizens is an example of a policy-based rulemaking. In *Citizens*, as here, an agency adopted rules applicable to regulated locations. 649 P.2d at 1057. The challenged rules prohibited certain conduct at liquor-licensed premises – such as topless hostesses – due to the agency’s predictive belief that such conduct would foster increased crime, a belief that was not subject to definitive proof. *Id.* at 1065. So, as here, the agency supported its decision with opinions and testimony from law

enforcement. *Id.* at 1064. The Colorado Supreme Court concluded that the rules in *Citizens* were a reasonable policy judgment given “the breadth and judgmental or predictive nature of the determinations made by the department, and the substantial element of policy choice inherent in the department's action.” *Id.* at 1065. The same is true here.

Appellants’ reliance on *Safe Extensions* is likewise misplaced. *Safe Extensions* involved the FAA issuing an “advisory circular,” a type of “informal adjudication” under the federal APA. *Safe Extensions*, 509 F.3d at 595-596. Appellant’s invitation for the Court to rely on *Safe Extensions* is an invitation for error because this case involves a rulemaking, not an adjudication. *See* § 24-4-102(2), (10), (16) (adjudications result in orders and orders relate to actions “other than rule-making”). *Safe Extensions* is inapposite and, moreover, involved a fact specific question: whether certain equipment could withstand jet thrust on a runway. Appellants’ position is unsupported by case law.

D. The Regulations do not unreasonably favor hunters and anglers or restrict wildlife viewing.

Appellants contend that CPW improperly limits wildlife-related recreation on SWAs to hunting and fishing. Opening Br. at 19. In order to address Appellant’s argument, we must first examine what is included in “wildlife-related recreation.” Appellants imply that this includes simply paddleboarding, camping, wading, or dog-walking. *Id.* at 1. CPW, however, has long understood this phrase to refer more specifically to hunting, fishing, and wildlife watching or viewing. CF, pp.104-105 (SWA Policy); *see also* 1207 (Statement with similar language); 912 (CPW’s website with the same). While no specific statutory definition of wildlife-related recreation exists, CPW’s understanding that wildlife-related recreation including hunting, fishing, trapping, and wildlife viewing is consistent with the overall statutory scheme.⁵ *See* §§ 33-4-102.7(1)(c) (describing wildlife-related

⁵ Federal law recognizes a similar understanding of wildlife-related recreation. 16 U.S.C. § 668dd (“The Refuge System provides important opportunities for compatible wildlife-dependent recreational activities involving hunting, fishing, wildlife observation and photography, and environmental education and interpretation.”); 43 C.F.R. § 10005.14(g)(3) (Pittman-Robertson Wildlife Restoration Act stating that a project may qualify by “[p]roviding opportunities for wildlife related recreation, including hunting and observation.”).

recreation to include “fishing, hunting, and wildlife viewing”); 33-1-104 (stating the Commission must develop, manage, and maintain programs of hunting, fishing, trapping, and other wildlife-related outdoor recreational activities); 33-4-120 (describing wildlife-related recreational opportunities and “specifically hunting and fishing”).

The statutes’ use of “wildlife viewing” in the context of the terms “hunting” and “fishing” is instructive. According to the “well-worn canon of statutory construction *noscitur a sociis*, a word [or phrase] may be known by the company it keeps.” *Neher v. Neher*, 402 P.3d 1030, 1038 (Colo. App. 2015); *People v. Opana*, 395 P.3d 757, 761 (Colo. App. 2017). This means that “wildlife viewing” must be closely associated with hunting and fishing, not the general outdoor recreation for which Appellants advocate. Accordingly, activities in which a person may incidentally encounter and view wildlife, such as rock climbing or paddleboarding, do not qualify. To find otherwise would give the phrase unintended breadth. *Young v. Brighton Sch. Dist.* 27J, 325 P.3d 571, 581 (Colo. 2014) (*citing and quoting Gutierrez v. Ada*, 528 U.S. 250, 255 (U.S. 2000)).

While Appellants desire that SWAs be open to all recreation, that is simply not their defined purpose. § 33-1-102(42). General recreation has a cumulative effect due to increased human presence. Even if such activities viewed in isolation are potentially seen as less impactful or “peaceful,” they still can cumulatively affect the wildlife and wildlife habitat SWAs are designed to protect. These areas are not playgrounds, water parks, or dog runs nor are they state parks. CF, pp.418, TR-6/22/23, p.11:4-10 (comments from Commissioner Adams stating that SWAs are not playgrounds), 419, 16:3-20 (comments from Commissioner May regarding the same emphasizing that these lands are for wildlife habitat and wildlife-related recreation).

SWAs are statutorily defined to benefit wildlife populations and to provide opportunities for wildlife-related recreation. *Id.* Unlike state parks and state recreational areas, they are not for general recreation nor are they managed to provide for a broad range of outdoor recreational opportunities. This distinction is important. If the legislature wanted SWAs to allow broad general recreation, it would have defined SWAs as such, as it did for state recreation areas, but it

did not and the statute must be read as a whole. *Sullivan v. Indus. Claim Appeals Office*, 22 P.3d 535, 537 (Colo. App. 2000); compare § 33-1-102(42) (defining SWAs as lands designated by the Commission to benefit wildlife populations or for wildlife-related recreation), with § 33-10-102(24) (defining state recreation areas as land or water areas offering a broad range of outdoor recreational opportunities). Still, consistent with the SWA Policy, CF, pp.104-105, the Regulations reasonably allow general recreation where appropriate. And, as discussed below, the Regulations allow many of the activities that Appellants advocate for on some, but not all, SWAs.

Appellants rely heavily on the legislative declaration in Section 33-1-101 to argue that the Regulations are invalid because, in their view, they do not provide for the “greatest possible variety of wildlife-related recreational opportunity.” Opening Br. at 14, 19, 21. Appellants, however, fail to reconcile this argument with Section 33-1-107 and the Commission’s specific rulemaking authority to limit or prohibit uses and activities on SWAs. *Sullivan*, 22 P.3d at 537 (“[A] special or specific statutory provision prevails over a general provision.”).

Further, the legislative declaration in Section 33-1-101 is merely a statement of aspirational policy and cannot override the plain language of a statute. *People v. Beverly*, 568 P.3d 398, 406 n.3 (Colo. App. 2025); *Barela v. Beye*, 916 P.2d 668, 676 (Colo. App. 1996). A court only resorts to this interpretive aid when a statute is ambiguous, *see* § 2-4-203(1)(g), and legislative declarations cannot narrow a statute. *People in Int. of T.B.*, 445 P.3d 1049, 1056 (Colo. 2019) (stating that a legislative declaration cannot narrow or modify a statute’s elements). Consequently, the District Court correctly rejected Appellants’ argument that the legislative declaration is controlling. Opening Br. at 21; CF, p.1077.

As noted by the District Court, the plain language of Section 33-1-107 authorizes the Commission to promulgate rules as may be reasonably necessary to limit or outright prohibit activities. CF, p.1077. The phrase “may be reasonably necessary” directs the Commission to use its discretion in engaging in any rulemaking. *People v. Valadez*, 374 P.3d 529, 532 (Colo. App. 2016) (“Usually the word ‘may’ denotes a grant of discretion and is interpreted as permissive.”). In exercising its

discretion, the Commission must make tough decisions. For example, the Commission denied a citizen petition for rulemaking to allow paragliding at the Radium SWA, CF, p.304, but has allowed this activity at Bodo SWA, *id.* at p.475. In adopting the Regulations, the Commission similarly used its discretion. It reasonably limited and, at times, outright prohibited certain activities on SWAs when necessary to protect their statutory values. It is actually the Regulations that provide for “the greatest possible variety of wildlife-related recreational opportunity” because, in their absence, SWAs may not fulfill their statutory purpose of sustaining wildlife, wildlife habitat, and wildlife-related recreation due to unrestricted overuse. §§ 33-1-101(1), 33-1-102(42).

Despite their reliance upon Section 33-1-101, Appellants do not identify any wildlife-related recreational activity that the Regulations completely or unduly restrict. Nowhere in the Regulations is wildlife viewing—the other generally recognized form of wildlife-related recreation—strictly prohibited. While the Regulations do limit access times and activities on SWAs, § 33-1-107(1)(b), the actual activity of

wildlife viewing is not unduly restricted. Instead, Appellants' arguments rest only on restrictions of general recreational activities which the Commission deemed necessary to protect SWAs.

Appellants' related argument - that the Regulations treat hunting and fishing as a "favored few" or restrict SWAs to only hunters and fishers – also falls flat. Opening Br. at 1, 19. First, the public may still access SWAs by purchasing a hunting or fishing license or a SWA pass. CF, pp.1115-1116. Additionally, a number of SWAs allow greater public access by exempting visitors from the license or pass requirement. *See, e.g., id.* at 1129-1141 (Bellaire Lake, Buena Vista, Cottonwood Creek SWAs).

Second, the Regulations simply do not favor or prioritize hunting and fishing as Appellants allege. For example, Appellants criticize the Regulations for allowing the use hunting dogs⁶ or use of vessels when

⁶ Appellants claim the evidence FoA submitted to the Commission regarding unleashed hunting dogs requires dismissal because it is un rebutted. But un rebutted evidence doesn't justify reversal. *See Colo. Auto & Truck Wreckers Ass'n v. Dep't of Rev.*, 618 P.2d 646, 652 (Colo. 1980) (un rebutted submissions are not controlling; "the agency can choose to disregard, after consideration, adverse submissions and adopt

hunting or fishing. Opening Br. at 6. Appellants' characterization is flawed because it ignores the property-specific exceptions allowing all SWA visitors to bring dogs or use vessels at numerous SWAs regardless of whether they are hunting or fishing. *See* CF, pp.1124-1200 (allowing leashed dog walking on over sixty SWAs and recreational vessel use on over fifty SWAs); *see* **Ex. A** (demonstrative table summarizing the SWAs allowing these and other generally prohibited uses under the adopted Regulations). Appellants also claim that "CPW allows an exception for the general prohibition on camping, but only for 'licensed hunters during an established big game season.'" Opening Br. at 8. Appellants are wrong. Forty SWAs allow camping for all. *See* **Ex. A**.

Appellants' argument concerning "absurd results" demonstrates their mischaracterization of the Regulations. Opening Br. at 22.

Appellants' claim that a family cannot bring a dog to an SWA but "a hunter can bring as many dogs as she wants" is legally incorrect. Some SWAs prohibit all dogs, even though hunting is allowed. *See, e.g.,* CF,

the proposed regulation." The Commission considered FoA's comments but made a different decision.

pp.1129, 1139 (Beaver Creek and Cochetopa SWAs). Other Commission regulations cap the number of hunting dogs that can be used at one time and impose other restrictions. 2 Colo. Code. Regs. § 406-2:242.A.1; 2 Colo. Code. Regs. § 406-0:004. Further, over sixty SWAs allow leashed dog walking as a form of general recreation. *See* **Ex. A**. Appellants' claim that non-hunters and anglers are prohibited from ever bringing a dog onto any SWA is wrong. *Compare* **Ex. A** (listing SWAs that allow leashed dogs), *with* Opening Br. at 23 (arguing that pets are prohibited even on a leash).

Appellants also incorrectly allege that a child cannot cool off in a lake, but “an unlimited number of hunters and fishers enter the same lake.” Opening Br. at 22. First, numerous SWAs allow swimming and wading. *See* CF, pp.1124-1200 (allowing water contact activities at eight SWAs), **Ex. A**. Second, Appellants' claim of unlimited hunters is an overstatement. Many SWAs limit the number of hunters and require reservations, *see, e.g.*, CF, pp.1125-1158 (Andrick Ponds, Brush Prairie Ponds, Centennial Valley, Elliot, and Jackson Lake SWAs), and others

impose separate hunting and fishing limitations.⁷ There are also practical limitations, such as parking and limited hunting areas, which further limit the actual number of hunters that could reasonably use a SWA. Accordingly, the Court should reject Appellants' flawed argument that the Regulations unlawfully favor hunting and fishing over other wildlife-related recreation.

Appellants have failed to carry their burden to demonstrate that the Regulations are arbitrary. Instead, the Regulations are a reasonable result of a comprehensive effort that considered the unique attributes and needs of the hundreds of SWAs. The Regulations make property-specific allowances, some of which benefit hunters and anglers, and

⁷ Some SWAs outright prohibit hunting and fishing. *See, e.g.*, CF, pp.1126-1194 (Badger Basin, Brower, Collins Mountain Ranch, Columbine, Grand Junction – West Lake, Sawhill Ponds, and Walker SWAs). Others limit what type of hunting may occur, *see, e.g., id.* at 1156, 1185 (Horsethief SWA prohibiting quail hunting and Sharptail Ridge SWA limiting hunting to deer and elk), and others restrict the method of take. *See, e.g. id.* at 1130-1185 (Bill Patterson SWA limiting hunting to shotguns, Diamond J SWA limiting hunting to shotguns and falconry, and Andrick Ponds, Centennial Valley, Jackson Lake, Mount Ouray, Mount Shavano, Shriver-Wright SWAs prohibiting centerfire rifles).

some of which benefit general recreationists. Appellants simply disagree with the Commission's policy judgment and prefer that more general recreation be allowed, but this disagreement does not make the Regulations arbitrary. *Citizens*, 649 P.2d at 103.

This policy disagreement is to be expected here. SWAs provide hunting and fishing opportunities and always have. Appellants advocate that hunting is a violent activity and generally object to the killing of wildlife. CF, pp.432-438 (FoA comment letter referencing killing of wildlife and its effect upon those who “peacefully enjoy wildlife”); 639 (affidavit of FoA counsel stating that FoA seeks to promote non-violent appreciation of wildlife). But the General Assembly has recognized hunting, fishing, and trapping both for their importance as a wildlife management tool, and for their importance to residents and visitors to Colorado and to local economies. §§ 33-1-101, 33-4-102.7. SWAs, in part, provide opportunities for wildlife-related recreation, including hunting, fishing, and trapping. This is their statutory purpose despite the beliefs of those who have a moral objection to such practices.

This Court should reject Appellants' arguments and uphold the Regulations.

II. The Commission complied with the APA.

A. Standard of Review and Preservation of Issue

CPW agrees that Section 24-4-106(7) provides the applicable standard of review. *Farmer*, 382 P.3d at 1267. This Court reviews questions of law *de novo*. Appellants' Opening Brief argues CPW violated Section 24-4-103(4)(a) and Section 24-4-103(8.1)(b)(III).

Opening Br. 31. Appellants preserved their argument that Commission failed to consider individual comments submitted through EngageCPW in violation of Section 24-4-103(4)(a). CF, pp.91-92 (Am. Compl. ¶¶ 168-171); 614 (Opening Br. and Mot. for Summ. J. at 28, arguing CPW violated Section 24-4-103(4)(a)).

However, Appellants never argued in the briefing before the District Court that Section 24-4-103(8.1)(b)(III) imposed a duty to include individual EngageCPW comments in the Commission's administrative record. *Id.* at 583-624, 1036-1066 (Opening Br. and

Reply Br.) But because the District Court made such a finding *sua sponte*, this Court can review the merits of that ruling. CF, pp.1085-1086; *see Rinker v. Colina-Lee*, 452 P.3d 161, 168 (Colo. App. 2019).

B. The Commission properly considered public comments submitted as directed by the rulemaking notices.

Section 24-4-103(4)(a) requires the Commission to file a notice of proposed rulemaking with the Colorado Secretary of State which is then published in the Colorado Register. At the time and place stated in the notice the Commission must consider all such submissions. § 24-4-103(4)(a). There is no dispute that CPW did so here.

The three rulemaking notices published in the Colorado Register – which “shall be the sole official publication[] . . . for notices of rule-making” – instructed commentors to provide written comments through the email address provided—not EngageCPW—or make oral comments at the rulemaking hearing. All such emailed comments were presented to and considered by the Commission, CF, pp.423-442, and numerous parties provided oral comments at the final hearing, including FoA, *id.* at pp.294-296, 423-442, 575-579, 416-417, TR-6/22/23, pp.3-8.

The District Court’s analysis correctly read the statute as a whole finding that the submissions to be considered are those received as specified in the rulemaking notices. *Id.* at 1111 (“Reading the statutory scheme as a coherent whole, it is evident that the “submissions” referred to in subsection (4)(a) are those submitted in connection with the notice of proposed rulemaking referenced in subsections (4)(a) and (11)(a).”). CPW fully complied with Section 24-4-103(4)(a).

C. Section 24-4-103(8.1)(b)(III) only imposes a duty on agencies to include submissions in the administrative record if they were received as specified in the notice of rulemaking.

Section 24-4-103(8.1)(a) states that “an agency shall maintain an official rule-making record for each proposed rule for which a notice of proposed rule-making has been published in the Colorado register.”

Subsection 8.1(b)(III) then provides that:

(b) The agency rule-making record shall contain: ... (III) All written petitions, requests, submissions, and comments received by the agency as of the date of the hearing on the rule and all other written materials, or a listing of such materials, considered by the agency in connection with the formulation

Appellants never cited to Section 24-4-103(8.1) in briefing before the District Court nor did they argue that this statute imposes a duty upon the Commission. Instead, the District Court developed an argument which Appellants now pursue. CF, pp.1085-1086. The argument is flawed because it conflates the Commission and the Division. The use of “agency” in Section (8.1)(a) and (b)(III), necessarily refers to the Commission—CPW’s rulemaking agency—not the Division, which has no rulemaking authority. §§ 33-1-104(1); 33-9-103(3). The Commission and the Division are separate agencies and conflating the two presents serious concerns for any volunteer rulemaking board that is supported by a separate staff agency. And the District Court’s analysis rests on *Studor v. Examining Bd. of Plumbers*, which is distinguishable. 929 P.2d 46 (Colo. App. 1996). In *Studor*, the agency lost important documents that were presented by the plaintiff at the rulemaking hearing. *Id.* at 50. That is not what happened here.

Here, the Commission complied with the APA by including all written comments that were submitted as directed by the rulemaking notices and transcripts of the oral comments provided at the

rulemaking hearings in the record. CF, pp.294-296, 423-442, 575-579, 416-417, TR-6/22/23, pp.3-8. Such action complies with the plain language of the APA. Indeed, Section 24-4-103(8.1)(b) provides that the *agency* “shall maintain an official rule-making record for each proposed rule for which a *notice* of proposed rule-making has been published in the Colorado register.” (Emphasis added). Reading the statute as a whole and in harmony, the notice referenced in subsection 8.1 is the same rulemaking notice referred to in subsections (4)(a) and 11(a) and, therefore, the comments to be included in the record and referred to in subsection 8.1(a)(III) are those received under the Commission’s rulemaking notices.

This is the logical analysis that the District Court correctly used to find that the Commission correctly considered the “submissions” under the rulemaking notices. *See* CF, p.1111. The District Court’s analysis should have applied equally to subsection 8.1. *Dodge v. Padilla*, 537 P.3d 409, 411 (Colo. App. 2023) (stating that courts “give effect to each word and construe the statute as a whole, giving its terms

consistent, harmonious, and sensible effect . . . must attempt to harmonize statutes relating to the same subject matter.”).

To read the statute otherwise would be illogical. Following that argument would require any agency engaged in a rulemaking to include any related communication from the public in the administrative record regardless of the public comment process described in its rulemaking notices and regardless of who at the agency received the submission. This could lead to especially absurd results here where there is the Commission, the rulemaking body on one hand, and the Division, the administrative body on another. For example, a potentially interested party in the subject of a Commission rulemaking could email its concerns to a Division staff employee, not the Commission, and that email would be required to be included administrative record, even though it was never received by the Commission—the rulemaking body. No Colorado court has imposed such a duty and this Court should avoid this absurd result. *Dodge*, 537 P.3d at 411.

D. If the Court finds the Commission violated Section 24-4-103(4)(a) or 24-4-103(8.1)(b)(III), any error was harmless because Appellants were not prejudiced.

“The harmless error rule applies to judicial review of administrative proceedings, and errors in such administrative proceedings will not require reversal unless plaintiffs can show they were prejudiced.” *Sheep Mountain Alliance v. Bd. of Cnty. Comm'rs*, 271 P.3d 597, 606 (Colo. App. 2011) (internal quotation marks omitted). Where the agency's mistake did not affect the outcome of the proceedings, “it would be senseless to vacate and remand for reconsideration.” *Rags Over the Arkansas River, Inc. v. Colorado Parks & Wildlife Bd.*, 360 P.3d 186, 197 (Colo. App. 2015). Thus, if an agency finding is reasonable, impropriety in the process is not a basis for reversal. *Id.*

Appellants cannot show prejudice here. FoA provided written and oral comments to the Commission. CF, pp.431-439; 417, TR-6/22/23, pp.6-8. Additionally, other comments in the record from professional advocacy organizations mirror Appellants’ primary contention – that CPW should permit “all kinds of casual recreation in addition to hunting and fishing” on SWAs. *See id.* at 427-431. The EngageCPW

comments mirroring this contention are summarized in the Division memorandum and are cumulative.

Tom Martin of Appellant River Runners for Wilderness also submitted a comment via EngageCPW expressing concern over vessel restrictions at Loma Boat Launch SWA. *Id.* at 675. Mr. Martin’s comment reflects a misunderstanding. Generally, the Regulations prohibit recreational use of vessels; however, the property-specific restrictions for Loma Boat Launch SWA provide that the “[l]aunching and use of vessels is allowed, except that the launching and take out of personal watercraft (PWC) [like Jet-Skis] is prohibited.” *Id.* at 1165-1166. Mr. Martin wasn’t prejudiced because the Regulations allow visitors to engage in Mr. Martin’s preferred activity—whitewater rafting. *Id.* And CPW staff summarized the EngageCPW comments regarding recreational vessels in the memorandum and the Commission heard specific oral comments on this topic at the hearing. *Id.* at 306, 417, TR-6/22/23, p.5:9-24.

Appellants have not shown prejudice and have not shown how the resulting Regulations would differ with the inclusion and specific

consideration of individual EngageCPW comments. Opening Br. at 41 (speculating that the result could have been different); *Rags Over the Arkansas River*, 360 P.3d at 198 (rejecting a plaintiff's claim that a result would differ if not for a procedural error where there was no support in the record for that conclusion).

E. *Studor* does not support Appellants' arguments.

Appellants exaggerate the facts of this case by comparing them to *Studor*. In *Studor*, the Plumbing Board made multiple errors in violation of the APA that collectively required reversal and a new hearing. 929 P.2d at 50. One of the many errors was the missing six documents presented at the hearing, which contained critical technical and safety information. Consequently, this Court found the omission to be significant because the missing documents were “precisely the type of documentation that should have been pertinent to the Board’s determination of the safety of the Studor vent.” *Id.*

Contrary to *Studor*, the issue here is not the omission of pertinent information on a specific issue raised at a hearing. The EngageCPW

comments touched on a variety of nontechnical topics and were often duplicative of other written comments received as specified in the notices or during oral public comment. *Compare* CF, pp.427-430

(comments regarding restrictions on vessel use), *with* 306

(memorandum summarizing comments on restrictions on vessel use).

The Division received the EngageCPW comments in response to a news release, not through an official rulemaking notice or at a hearing. The Commission did not receive them and did not consider the actual comments at any hearing, in contrast to *Studor*, and thus the record properly did not include them.

Even so, the Commission has not taken the position that it can disregard these comments, as Appellants allege. Opening Br. at 15. The Commission discussed many of the EngageCPW comments on the record and considered a memorandum summarizing the comments; thus, the Commission was aware of and considered those comments in that form. CF, pp.305-307, 416-421, TR-6/22/23, pp.3-4, 22-24.

Appellants' argument elevates form over substance and there is no reason to believe that including all of the individual EngageCPW

comments verbatim in the record would change the Commission's unanimous vote adopting the Regulations. Therefore, the present matter differs significantly from *Studor* and Appellants' comparison is unpersuasive.

As the District Court correctly found, the absence of the EngageCPW comments from the record does not frustrate judicial review. *Id.* at 1086. This omission does not make "it is impossible to discern the correctness of the Board's contentions," as was the case in *Studor*. 929 P.2d at 50. Any error was harmless.

CONCLUSION

For the foregoing reasons, the Court should affirm the District Court's findings that the Regulations are reasonable and that the Commission substantially complied with the APA.

Respectfully submitted this this 27th day of March, 2026.

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Section

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within *Appellees' Answer Brief* upon all parties herein by Colorado Courts E-filing System (CCE), this 27th day of March 2026 addressed as follows:

Party Name	Party Type	Attorney Name
Friends of Animals	Plaintiff-Appellant	ADAM ROBERT KREGER (Friends of Animals) JENNIFER BEST (Friends of Animals) STEPHEN RUSSEL HERNICK
Living Rivers	Plaintiff-Appellant	ADAM ROBERT KREGER (Friends of Animals) JENNIFER BEST (Friends of Animals) STEPHEN RUSSEL HERNICK
River Runners For Wilderness	Plaintiff-Appellant	ADAM ROBERT KREGER (Friends of Animals) JENNIFER BEST (Friends of Animals) STEPHEN RUSSEL HERNICK
Colorado Parks and Wildlife Commission	Defendant-Appellee	Christopher G Breidenbach (CO Attorney General) Christopher Robert Stork (CO Attorney General) John Edward Matter (CO Attorney General)
Division of Parks And Wildlife	Defendant-Appellee	Christopher G Breidenbach (CO Attorney General) Christopher Robert Stork (CO Attorney General) John Edward Matter (CO Attorney General)

/s/ Colin Lind