

District Court, Yuma County, Colorado 310 Ash Street Wray, Colorado 80758	DATE FILED: October 28, 2016 12:57 PM FILING ID: 563D842A7FAED CASE NUMBER: 2016CV30022
STATE OF COLORADO, DEPARTMENT OF NATURAL RESOURCES, PARKS & WILDLIFE COMMISSION and DIVISION OF PARKS & WILDLIFE Plaintiffs, v. 5 STAR FEEDLOT, INC. Defendant.	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Attorneys for the Colorado Division of Parks and Wildlife and the Parks and Wildlife Commission: Cynthia H. Coffman Colorado Attorney General Nicholas J. Lopez, 47484* Assistant Attorney General Parks & Wildlife Unit Nicholas.Lopez@coag.gov (720) 508 – 6429 1300 Broadway, 7 th Floor Denver, Colorado 80238 *Counsel of Record	Case No. 16CV30022 Division: B Courtroom:
AMENDED COMPLAINT	

Plaintiff, the State of Colorado Division of Parks and Wildlife and the Parks and Wildlife Commission, by and through the Colorado Attorney General and the undersigned Assistant Attorney General, hereby submits this Amended Complaint.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to Colo. Const. art. VI, sec. 9, and section 33-6-110, C.R.S.
2. Venue is proper in Yuma County District Court.

PLAINTIFF

3. The Colorado Division of Parks and Wildlife and the Parks and Wildlife Commission (hereinafter collectively referred to as "CPW") is an agency of the State of Colorado duly authorized and acting pursuant to section 33-9-102, C.R.S., and section 33-9-104, C.R.S.

4. CPW is located at 1313 Sherman St., Denver, Colorado 80203.

5. All wildlife within Colorado not lawfully acquired and held in private ownership is the property of the State of Colorado. C.R.S. § 33-1-101(2).

6. Right, title, interest, acquisition, transfer, sale, importation, exportation, release, donation, or possession of wildlife is permitted only as provided in articles 1 to 6 of title 33 or in any rule of the Colorado Parks and Wildlife Commission. C.R.S. § 33-1-102(2).

7. CPW is charged with all wildlife management, licensing requirements, and for the promulgation of rules, regulations, and orders concerning wildlife programs in the State of Colorado. C.R.S. § 33-1-104(1).

8. CPW has sole authority to regulate the taking, possession, and use of wildlife in the State of Colorado. C.R.S. § 33-1-106.

9. This authority allows CPW to require persons to obtain licenses for the purposes of hunting, fishing, trapping, taking, or possessing wildlife. C.R.S. § 33-1-106(1)(e).

10. As part of its authority over wildlife, CPW is tasked with ensuring that the wildlife and their environment are protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of Colorado and its visitors. C.R.S. § 33-1-101(1).

DEFENDANT

11. 5 Star Feedlot, Inc. ("5 Star") is a Colorado Corporation conducting business for profit in the State of Colorado.

12. 5 Star's principal offices are located at 1480 Senter Avenue, Burlington, Colorado 80807.

13. Upon information and belief, 5 Star may also be doing business as Bonny Feeders.

14. Upon information and belief, 5 Star is owned by Cure Land, LLC.

15. Michael Cure is the President and registered agent of 5 Star whose address is listed as 1480 Senter Avenue, Burlington, Colorado 80807.

16. In documents submitted to the State, Tyson Cure is listed as the legal and on-site contact for 5 Star.

17. 5 Star is one of many entities managed and operated by members of the Cure family. Other entities include but are not limited to: Cure Land, LLC; Cure Land II, LLC; Cure Feeders, LLC; and Beef Acres, Inc. ("Cure Entities")

18. The Cure Entities all share the same principal office location of 1480 Senter Avenue, Burlington, Colorado 80807, and list Cure family members as registered agents sharing the same address.

GENERAL ALLEGATIONS

5 Star's Operation

19. 5 Star operates an animal feeding operation ("Bonny Feeders Facility") located near Idalia, Colorado with a confinement capacity of approximately 28,000 animals. Upon information and belief, 5 Star confines between 25,000 and 27,000 cattle and 12 to 14 horses.

20. The Bonny Feeders Facility is a large concentrated animal feeding operation as defined by Colorado Water Quality Control Commission's Animal Feeding Operations Control Regulation, 5 CCR 1002-81, § 81.3, and the Colorado Discharge Permit System Regulation, 5 CCR 1002-61, § 61.2.

21. The production area for the Bonny Feeders Facility covers approximately 175 acres.

22. Located throughout the production area are a number of wastewater impoundments where wastewater is held for evaporation, application, or transportation.

23. The Bonny Feeders Facility has a wastewater storage capacity of approximately 74 acre-feet and produces approximately 19,775,897 gallons of wastewater per year.

24. The Bonny Feeders Facility is located near the South Fork of the Republican River (the "River").

The River

25. From the location where the River passes by the Bonny Feeders Facility, the River continues east approximately six miles before entering the State of Kansas.

26. A significant portion of the lands adjoining the River along that six-mile stretch are managed by CPW as the South Republican State Wildlife Area.

27. Downstream of the Bonny Feeders Facility and located on the River is the Hale Ponds.

28. The Hale Ponds consist of three ponds within the South Republican State Wildlife Area that are managed by CPW.

29. The River feeds into the Hale Ponds through an inlet located approximately one-half mile from the Colorado-Kansas border.

Wildlife in the River and Hale Ponds

30. Various types of fish, mostly native species, inhabit the River.

31. These stream fish are considered to be of high value and biodiversity in the State of Colorado.

32. The Hale Ponds is a recreational fishery.

33. The fish inhabiting the River and Hale Ponds include species classified as threatened fish.

34. Threatened wildlife are managed by CPW. C.R.S. § 33-2-105.

35. The threatened species inhabiting the River and Hale Ponds include Brassy Minnows.

36. The fish inhabiting the River and Hale Ponds include species classified as game fish.

37. Game fish are managed by CPW.

38. The game fish inhabiting the River and Hale Ponds include: Channel Catfish; Bluegill Sunfish; Golden Shiners; Green Sunfish; Plains Killifish; Red Shiners; Black Bullhead Catfish; White Suckers; Creek Chubs; Largemouth Bass; Fathead Minnows; Central Stonerollers; Sand Shiners; Western Mosquitofish; Grass Carp; Common Carp; Freshwater Drum; Black Crappie; Sunfish; and Trout.

39. The fish inhabiting the River and Hale Ponds include species classified as non-game fish.

40. Non-game fish are managed by CPW. C.R.S. § 33-2-104.

41. The non-game fish inhabiting the River and Hale Ponds include: Stonecat Catfish and Orangethroat Darter.

42. The Stonecat Catfish is classified by the State of Colorado as a species of concern.

43. The Orangethroat Darter is classified by the State of Colorado as a species of concern.

Inspections of Bonny Feeders Facility

44. On May 27, 2011, the Colorado Department of Public Health and Environment conducted an inspection of the Bonny Feeders Facility. The Colorado Department of Public Health and Environment completed an inspection report ("2011 Report"), a copy of which is attached as **Exhibit 1**.

45. During that inspection, the inspector noted that minor erosion of the banks was observed on one of the impoundments.

46. The 2011 Report noted that some impoundments had less than one foot of freeboard (capacity) and that impoundments needed to be pumped down in order to provide capacity for a 25-year, 24-hour storm event.

47. The 2011 Report contained corrective actions that 5 Star was expected to complete as a result of the inspection. These included:

- a. Dewater all wastewater impoundments so the impoundments could contain runoff from a 25-year, 24-hour storm event.
- b. Remove manure and other solids from impoundments to ensure capacity for a 25-year, 24-hour storm event.
- c. Grade and fill to avoid seepage and to ensure wastewater ponding outside of designated impoundments is minimized.
- d. Monitor impoundment bank erosion during weekly impoundment inspections and take corrective action if erosion worsens.

48. On January 29, 2015, the Colorado Department of Public Health and Environment conducted a second inspection of the Bonny Feeders Facility. The Colorado Department of Public Health and Environment completed an inspection report ("2015 Report), a copy of which is attached as **Exhibit 2**.

49. The inspector made the following findings:

- a. 5 Star had failed to implement installation of depth markers in all impoundments necessary to contain a 25-year, 24-hour storm event.
- b. 5 Star had failed to implement inspections of depth markers and record wastewater levels in each impoundment requiring a depth marker on a weekly basis.
- c. At least two impoundments did not contain depth markers.
- d. At least two impoundments were above their pump-down levels. The pump-down levels for these impoundments were 6 feet but wastewater levels were measured at approximately 8.5 feet.

50. The 2015 Report contained corrective actions that 5 Star was expected to complete as a result of the inspection. These included:

- a. Installation of depth markers in each impoundment required to contain runoff from a designated storm event.

- b. Properly maintain impoundments.
- c. Inspect depth markers weekly and record wastewater levels.
- d. Remove wastewater from impoundments to maintain wastewater levels below the pump-down level required to store runoff from a designated storm event.

The Unlawful Discharge

51. On June 5, 2015, the Bonny Feeders Facility and surrounding areas experienced a large rain event.

52. Sometime on June 5, 2015, one of the wastewater impoundments overtopped the banks of the structure.

53. The wastewater flowed away from the structure approximately 130 feet into a vegetated area located west of the wastewater impoundment.

54. At approximately 6:30 p.m., a second wastewater impoundment began to discharge wastewater after its wall bank began to erode.

55. The wastewater flowed south approximately 350 feet and crossed Yuma County Road 7. The wastewater continued south and entered a natural drainage. The wastewater then flowed through the drainage before entering the River.

56. Witnesses observed the wastewater flow from the Bonny Feeders Facility, across an adjacent land owner's property, and into the River.

57. Once the wastewater was discharged into the River, it flowed downstream through the South Republican State Wildlife Area, into the Hale Ponds, and continued east into Kansas.

58. The wastewater discharged from the wastewater impoundment contained high concentrations of constituents, including ammonia related to animal waste.

59. The wastewater impoundment continued to discharge wastewater overnight and into the early morning hours of June 6, 2015.

Unlawful Take of Wildlife

60. On June 8, 2015, CPW received a call from a member of the public informing CPW that a breach of 5 Star's wastewater impoundment had occurred resulting in a discharge of wastewater into the River.

61. At approximately 12:35 p.m., CPW personnel arrived at the location where it was described that wastewater had been discharged into the River.

62. Based on a review of the area, CPW personnel were able to determine that a discharge had occurred from the Bonny Feeders Facility and that wastewater had flowed into the River.

63. CPW personnel began walking the River and Hale Ponds to determine whether the discharge had an impact on the health of the riparian area, including any wildlife. While walking the River and Hale Ponds, CPW personnel observed multiple species of dead fish. These fish were collected by CPW personnel.

64. Based on the dead fish observed during the initial walkthrough, CPW initiated an investigation of the incident.

65. On June 9, 2015, CPW personnel began sampling the River between the discharge point and the Colorado-Kansas border. CPW personnel collected dead fish during its investigation.

66. While collecting dead fish, CPW personnel observed that the portion of the River downstream of where the wastewater discharged into the River appeared to have risen by a few feet indicating a significant impact on the River by the discharge.

67. Dead fish were observed at locations along the River that were downstream from where the wastewater discharged into the River.

68. CPW also conducted sampling at locations upstream of where the wastewater discharged into the River. No dead fish were observed or collected at this portion of the River.

69. CPW also sampled the Hale Ponds and collected dead fish located in and along the Hale Ponds.

70. Both CPW and the Colorado Department of Public Health and Environment took water quality samples from the River and Hale Ponds. An analysis of the water quality samples determined that the water in the River and Hale Ponds contained high concentrations of ammonia related to animal waste and low levels of dissolved oxygen.

71. These constituents, including but not limited to, ammonia, are toxic to fish.

72. The discharged wastewater adversely impacted approximately nine miles of the River and the Hale Ponds downstream from the discharge point.

73. Based on the fish actually collected by CPW personnel, CPW determined that, at minimum, 14,711 fish were killed in the River and Hale Ponds as a result of the discharge of wastewater into the River.

74. Of the fish identified as a result of the CPW investigation, CPW identified threatened, game, and non-game fish that were killed as a result of the discharge of wastewater.

75. The following threatened species were killed as a result of the wastewater discharge:

- a. 105 Brassy Minnows from the River.

76. The following game species were killed as a result of the wastewater discharge:

- a. 65 Channel Catfish from the Hale Ponds.
- b. 634 Sunfish from the Hale Ponds.
- c. 34 Bluegill Sunfish from the Hale Ponds.
- d. 2 Green Sunfish from the Hale Ponds.
- e. 1 Freshwater Drum from the Hale Ponds.
- f. 24 Black Crappie from the Hale Ponds.
- g. 3 Golden Shiners from the Hale Ponds.

- h. 27 Trout from the Hale Ponds.
- i. 422 Plains Killifish from the River.
- j. 2,496 Red Shiners from the River.
- k. 397 Black Bullhead Catfish from the River and the Hale Ponds.
- l. 779 White Suckers from the River and the Hale Ponds.
- m. 1,476 Creek Chubs from the River.
- n. 78 Largemouth Bass from the River and the Hale Ponds.
- o. 1,652 Fathead Minnows from the River.
- p. 1,230 Central Stonerollers from the River.
- q. 387 Sand Shiners from the River.
- r. 35 Western Mosquitofish from the River.
- s. 35 Grass Carp from the River.
- t. 98 Common Carp from the River and the Hale Ponds.

77. The following non-game species were killed as a result of the wastewater discharge:

- a. 562 Stonecat Catfish from the River.
- b. 70 Orangethroat Darters from the River.

78. Additionally, 1,321 fish were killed but could not be distinguished between Golden Shiners or Gizzard Shads. For purposes of this action, these fish are categorized as game fish, which are the lowest recoverable value available to the State.

79. An additional 2,777 fish were killed but could not be identified as a specific species due to decomposition and other factors. For purposes of this action, these fish are categorized as game fish, which are the lowest recoverable value available to the State.

80. On June 9, 2015, the Kansas Department of Wildlife, Parks and Tourism (“Kansas Officials”) received a report from the St. Francis Police Department about the presence of dead fish located along the River in St. Francis, Kansas.

81. Upon investigation, Kansas Officials observed brown water conditions in the River which it reported were consistent with the influx of livestock waste.

82. On June 10, 2015, Kansas Officials issued a health advisory for the River from the Colorado state line to the Nebraska state line for suspected elevated levels of bacteria and other pollutants along with an observed fish kill in the River.

83. Kansas Officials determined that approximately 88,270 dead fish were present in the 18.4 miles of stream between the Colorado-Kansas border and St. Francis, Kansas.

84. In total, Kansas Officials estimated that approximately 208,390 fish were killed along the River in Kansas. Kansas Officials also reported that it was likely that more fish species had been impacted than what had been observed by the limited, spot investigation.

85. The following species of fish were identified as part of the fish that were found dead in Kansas: Central Stoneroller, Creek Chub, Orangethroat Darter, White Sucker, Green Sunfish, and Black Bullhead.

86. Kansas officials also tested the River and determined that reduced dissolved oxygen in the River due to elevated bacterial metabolism caused suffocation and death of the fish observed.

87. Kansas officials concluded that the livestock wastewater discharge “resulted in conditions that likely killed a large proportion of the fish community inhabiting the [River] including some of the most tolerant species such as green sunfish and black bullheads.”

Water Quality Violations

88. On July 6, 2015, the Colorado Department of Public Health and Environment issued a Compliance Advisory to 5 Star (“2015 Advisory”), a copy of which is attached as **Exhibit 3**.

89. The 2015 Advisory alleged two violations:

- a. 5 Star unlawfully discharged manure and wastewater from its Bonnie Feeders Facility into waters of the State that are also waters of the U.S. in violation of 5 CCR 1002-81, §81.5(1)(a).
- b. 5 Star unlawfully failed to report a discharge within 24 hours of becoming aware of the discharge in violation of 5 CCR 1002-81, §81.5(1)(a).

90. According to the 2015 Advisory, 5 Star discharged a pollutant into the River without an appropriate permit.

Subsequent Discharge

91. Beginning on April 1, 2016, and ending on May 23, 2016, the Bonnie Feeders Facility experienced another severe storm event with approximately seven to eight inches of precipitation occurring during that time period.

92. During that event, four inches of precipitation occurred on April 17, 2016, alone.

93. On May 5, 2016, the Colorado Department of Public Health and Environment received a complaint alleging another potential discharge of manure and wastewater from the Bonnie Feeders Facility as a result of the rainfall event.

94. Upon investigation, the Colorado Department of Public Health and Environment identified several areas of pooled wastewater within an unnamed drainage.

95. On June 8, 2016, the Colorado Department of Public Health and Environment issued a Compliance Advisory to 5 Star containing alleged violations and required actions ("2016 Advisory"). A copy of the 2016 Advisory is attached as **Exhibit 4**.

96. The 2016 Advisory alleged the following violations of the Bonnie Feeders Facility permit:

- a. Failure to properly dewater impoundment structures whenever the storage capacity is less than the volume required to store runoff from a 25-year, 24-hour storm event.

- b. Exceeding the soil water holding capacity when applying wastewater.
- c. Application of wastewater within 100 feet of any down-gradient surface waters, open tile line intake structures, sinkholes, agricultural well heads, or other conduits to surface water.

FIRST CLAIM FOR RELIEF

(Unlawful Taking of Threatened Wildlife)

Violation of C.R.S. § 33-2-105(4) and C.R.S. § 33-6-109(1)

Recovery under C.R.S. § 33-6-110(1)(b)

- 97. CPW incorporates by reference paragraphs one through ninety-six above as though fully stated herein.
- 98. It is unlawful for any person to take threatened wildlife. C.R.S. § 33-2-105(4).
- 99. It is unlawful for any person to take any wildlife that is the property of the State of Colorado unless otherwise permitted by statute or regulation. C.R.S. § 33-6-109(1).
- 100. Brassy Minnows are wildlife. C.R.S. § 33-1-102(51).
- 101. Brassy Minnows are the property of the State of Colorado. C.R.S. § 33-1-101(2).
- 102. Brassy Minnows are categorized as a threatened species under Colorado law. 2 CCR 406-10, #1003.A.
- 103. 5 Star is a Colorado corporation and thus is a person. C.R.S. § 33-1-102(33).
- 104. 5 Star's unlawful discharge of wastewater from its Bonny Feeders Facility on June 5, 2015, resulted in the death of 105 Brassy Minnows located in the River.
- 105. Killing wildlife constitutes a take under Colorado law.
- 106. 5 Star engaged in a take of 105 threatened wildlife on June 5, 2015.

107. Unless otherwise stated in article 6 of title 33 or CPW regulation, any person, regardless of age, who hunts or takes wildlife in Colorado shall procure a proper and valid license. C.R.S. § 33-6-107(3).

108. 5 Star did not possess a license or otherwise have CPW approval to take 105 Brassy Minnows on June 5, 2015.

109. There is no other statutory or regulatory provision which otherwise authorized 5 Star to take the 105 Brassy Minnows.

110. Therefore, 5 Star engaged in an unlawful take of 105 Brassy Minnows in violation of section 33-2-105(4), C.R.S.

111. 5 Star also engaged in an unlawful take of 105 Brassy Minnows in violation of section 33-6-109(1), C.R.S.

112. Section 33-6-110(1)(b), C.R.S., allows for the State of Colorado to recover the value of threatened fish unlawfully taken at a minimum of \$700 for each threatened fish killed.

113. CPW is entitled to the value of 105 Brassy Minnow unlawfully taken by 5 Star on June 5, 2016.

SECOND CLAIM FOR RELIEF
(Unlawful Taking of Game Fish)
Violation of C.R.S. § 33-6-109(1)
Recovery under C.R.S. § 33-6-110(1)(f)

114. CPW incorporates by reference paragraphs one through one-hundred and thirteen above as though fully stated herein.

115. It is unlawful for any person to take any wildlife that is the property of the State of Colorado unless otherwise permitted by statute or regulation. C.R.S. § 33-6-109(1).

116. The following species are classified as wildlife under Colorado law: Channel Catfish; Bluegill Sunfish; Golden Shiners; Green Sunfish; Plains Killifish; Red Shiners; Black Bullhead Catfish; White Suckers; Creek Chubs; Largemouth Bass; Fathead Minnows; Central Stonerollers; Sand Shiners; Western Mosquitofish; Grass Carp; Common Carp; Freshwater Drum; Black Crappie; Sunfish; and Trout. C.R.S. § 33-1-102(51).

117. The aquatic species listed in paragraph one-hundred and sixteen are the property of the State of Colorado. C.R.S. § 33-1-101(2).

118. The aquatic species listed in paragraph one-hundred and sixteen are game fish under Colorado law. 2 CCR 406-1, #100.D.

119. 5 Star caused the death of a minimum of 13,974 game fish located in the River and the Hale Ponds when it unlawfully discharged wastewater from its Bonny Feeders Facility into the River on June 5, 2015.

120. Killing wildlife constitutes a take under Colorado law.

121. 5 Star engaged in a take of 13,974 game fish on June 5, 2015.

122. Unless otherwise stated in article 6 of title 33 or CPW regulation, any person, regardless of age, who hunts or takes wildlife in Colorado shall procure a proper and valid license. C.R.S. § 33-6-107(3).

123. 5 Star did not possess a license or otherwise have CPW approval to take 13,974 game fish on June 5, 2015.

124. There is no other statutory or regulatory provision which otherwise authorized 5 Star to take 13,974 game fish on June 5, 2015.

125. Therefore, 5 Star engaged in an unlawful take of 13,974 game fish in violation of section 33-6-109(1), C.R.S.

126. Section 33-6-110(1)(f), C.R.S., allows for the State of Colorado to recover the value of game fish unlawfully taken at a minimum of \$35 for each game fish taken.

127. CPW is entitled to the value of 13,974 game fish unlawfully taken by 5 Star on June 5, 2016.

THIRD CLAIM FOR RELIEF

(Unlawful Taking of Non-Game Fish)

Violation of C.R.S. § 33-2-104(3) and C.R.S. § 33-6-109(1)

Recovery under C.R.S. § 33-6-110(1)(e)

128. CPW incorporates by reference paragraphs one through one-hundred and twenty-seven above as though fully stated herein.

129. It is unlawful for any person to take non-game wildlife. C.R.S. § 33-2-104(3).

130. It is unlawful for any person to take any wildlife that is the property of the State of Colorado unless otherwise permitted by statute or regulation. C.R.S. § 33-6-109(1).

131. The following species are wildlife under Colorado law: Stonecat Catfish and Orangethroat Darter. C.R.S. § 33-1-102(51).

132. The aquatic species listed in paragraph one-hundred and thirty-one are the property of the State of Colorado. C.R.S. § 33-1-101(2).

133. The aquatic species listed in paragraph one-hundred and thirty-one are non-game wildlife. 2 CCR 406-10, #1004.A.1.

134. 5 Star caused the death of a minimum of 632 non-game fish located in the River and the Hale Ponds when it unlawfully discharged wastewater from its Bonny Feeders Facility into the River on June 5, 2015.

135. Killing wildlife constitutes a taking under Colorado law.

136. Unless otherwise stated in article 6 of title 33 or CPW regulation, any person, regardless of age, who hunts or takes wildlife in Colorado shall procure a proper and valid license. C.R.S. § 33-6-107(3).

137. 5 Star did not possess a license or otherwise have CPW approval to take 632 non-game fish on June 5, 2015.

138. There is no other statutory or regulatory provision which otherwise authorized 5 Star to take 632 non-game fish on June 5, 2015.

139. Therefore, 5 Star engaged in an unlawful take of 632 non-game fish in violation of section 33-2-104(3), C.R.S.

140. 5 Star also engaged in an unlawful take of 632 non-game fish in violation of section 33-6-109(1), C.R.S.

141. Section 33-6-110(1)(e), C.R.S., allows for the State of Colorado to recover the value of non-game fish unlawfully taken at a minimum of \$100 for each game fish taken.

142. CPW is entitled to the value of 632 non-game fish unlawfully taken by 5 Star on June 5, 2016.

FOURTH CLAIM FOR RELIEF
(Negligence Per Se)

143. CPW hereby incorporates by reference paragraphs one through one-hundred and forty-two above as if each paragraph were set forth herein in its entirety.

144. 5 Star manufactured and stored wastewater on its property which contains high levels of ammonia and other substances which are lethal to wildlife in Colorado, including fish.

145. 5 Star discharged that wastewater into the River.

146. 5 Star's discharge of wastewater into the River was the proximate cause of the death of 14,711 fish.

147. It is unlawful under Colorado law for any person to take wildlife that is the property of the State of Colorado. C.R.S. § 33-6-109(1).

148. Section 33-6-109(1), C.R.S., is designed to protect against harm to the People of the State of Colorado by protecting wildlife belonging to the People of this state.

149. The State of Colorado, its citizens, and CPW, as the agency tasked with managing wildlife on behalf of the People of Colorado, is among the class of persons designed to be protected by section 33-6-109(1), C.R.S.

150. As a result, 5 Star's unlawful take of 14,711 fish on June 5, 2015, is the type of injury that section 33-6-109(1), C.R.S., was enacted to prevent.

151. It is unlawful for any person to discharge any pollutant into any state water from a point source without first obtaining a permit. C.R.S. § 25-8-501.

152. Section 25-8-501, C.R.S., is part of a statutory scheme designed to protect the quality of water for the protection and propagation of wildlife and aquatic life. C.R.S. § 25-8-102(2).

153. The State of Colorado and its citizens, as the owner of wildlife in this state, are among the class of persons designed to be protected by section 25-8-501, C.R.S.

154. As a result, 5 Star's unlawful take of 14,711 fish on June 5, 2015, is the type of injury that section 25-8-501, C.R.S., was enacted to prevent.

155. Therefore, CPW is entitled to monetary relief under the common law doctrine of negligence per se.

FIFTH CLAIM FOR RELIEF

(Negligence)

156. CPW hereby incorporates by reference paragraphs one through one-hundred and fifty-five above as if each paragraph were set forth herein in its entirety.

157. 5 Star manufactured and stored wastewater on its property which contained high levels of ammonia and other substances which are lethal to wildlife in Colorado, including fish.

158. 5 Star had a duty to comply with all statutory and regulatory provisions that pertain to or protect wildlife in the State of Colorado. C.R.S. § 33-6-109(1).

159. 5 Star owed a duty to the People of Colorado, and through them, CPW, not to engage in unlawful actions resulting in a take of threatened wildlife belonging to the People. C.R.S. § 33-2-105(4); C.R.S. § 33-6-109(1); C.R.S. § 33-6-110.

160. 5 Star owed a duty to the People of Colorado, and through them, CPW, not to engage in unlawful actions resulting in a take of game fish belonging to the People. C.R.S. § 33-6-109(1); C.R.S. § 33-6-110.

161. 5 Star owed a duty to the People of Colorado, and through them, CPW, not to engage in unlawful actions resulting in a take of non-game fish belonging to the People. C.R.S. § 33-2-104(3), C.R.S. § 33-6-109(1), C.R.S. § 33-6-110.

162. 5 Star owed a duty to the People of Colorado, and through them, CPW, not to engage in unlawful actions that expose toxic wastewater to wildlife belonging to the People. C.R.S. § 25-8-102(2); C.R.S. § 25-8-501.

163. 5 Star owed a duty to the People of Colorado, and through them, CPW, to operate its wastewater impoundments in a manner required by law. 5 CCR 1002-81, § 81.6(1); 5 CCR 1002-81, § 81.7.

164. 5 Star was negligent in the operation of its wastewater impoundments by failing to operate said impoundments at levels and with such care as required for proper operation.

165. 5 Star was negligent in the operation of its wastewater impoundments by failing to correct operational deficiencies and take corrective action required by the Colorado Department of Public Health and Environment with regard to the operation of its wastewater impoundments.

166. 5 Star breached the duty of care owed to CPW.

167. 5 Star's breach of the duty of care resulted in the discharge of wastewater into the River.

168. The discharge of wastewater into the River was the direct and proximate cause of the death of over 14,711 fish.

169. CPW suffered injury in fact when the fish it owns and manages on behalf of the citizens of Colorado was unlawfully taken.

170. CPW is entitled to damages for the killing of the fish.

PRAYER FOR RELIEF

WHEREFORE, CPW respectfully prays that the Court award CPW:

(1) A monetary judgment against 5 Star in an amount established by section 33-6-110, C.R.S., for a minimum of 105 threatened fish unlawfully taken by 5 Star on June 5, 2015, or such larger amounts as may be proven at trial.

(2) A monetary judgment against 5 Star in an amount established by section 33-6-110, C.R.S., for a minimum of 13,974 game fish unlawfully taken by 5 Star on June 5, 2015, or such larger amounts as may be proven at trial.

(3) A monetary judgment against 5 Star in an amount established by section 33-6-110, C.R.S., for a minimum of 632 non-game fish unlawfully taken by 5 Star on June 5, 2015, or such larger amounts as may be proven at trial.

(4) A monetary judgment against 5 Star in an amount as shall be determined to fully and fairly compensate CPW for all general, special, incidental, and consequential damages incurred, or to be incurred, by CPW as the direct and proximate result of the acts and omissions of 5 Star.

(5) Costs and reasonable attorney's fees incurred.

(6) Such other and further relief as this Court deems necessary and proper under the circumstances.

Respectfully submitted this 28th day of October, 2016.

Cynthia H. Coffman
Attorney General



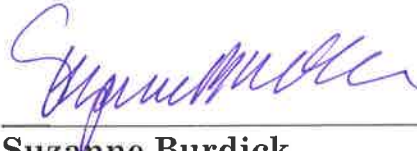
Nicholas J. Lopez
Assistant Attorney General
Parks and Wildlife Unit
Natural Resources & Environment Section
Colorado Department of Law

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I certify that on this 28th day of October, 2016, a true and correct copy of the **AMENDED COMPLAINT** foregoing was electronically filed with the Court and served via ICCES to the following:

Party Name	Party Type	Attorney
5 Star Feedlot, Inc.	Defendant	Richard C. Kaufman Ryley Carlock & Applewhite Julie A. Rosen Ryley Carlock & Applewhite



Suzanne Burdick
Paralegal
Parks and Wildlife Unit
Colorado Department of Law