

**Audubon Colorado • Center for Native Ecosystems • Colorado Environmental Coalition •
Colorado Mule Deer Association • Colorado Wildlife Federation • National Wildlife
Federation • Natural Resources Defense Council • San Luis Valley Ecosystem Council •
Western Colorado Congress**

March 18, 2008

David Neslin
Acting Director
Colorado Oil and Gas Conservation Commission
1120 Lincoln Street, Suite 801
Denver, Colorado 80203

Re: Adoption of Rules to Implement HB 1298 and 1341

Dear David:

On behalf of the undersigned non-profit organizations representing the interests of Colorado sportsmen and wildlife advocates, we are writing to express our support for the efforts by the Oil and Gas Conservation Commission, the Division of Wildlife, and the Department of Public Health and Environment in working to develop and adopt rules to implement HB 1298 and 1341. We have appreciated the opportunity to participate in the stakeholder working group meetings, and believe that those have provided a useful and transparent opportunity for representatives of all affected stakeholders to comment on the pre-draft rule proposal and engage in a useful dialogue with COGCC, CDOW, and CDPHE staff. Recognizing that considerable additional deliberations will occur as the Commission develops a proposed rule and conducts a rulemaking hearing, we would like to offer the following supplemental comments at this time.

As advocates for Colorado's rich wildlife heritage, contributors to and supporters of the Wildlife Management Guidelines (Wildlife Guidelines) for Oil and Gas Development, and supporters of HB 1298, we believe that the concepts included in the pre-draft rule and discussed during the stakeholder working group meetings, including the draft consultation criteria and Standard Operating Practices developed by the Division of Wildlife, represent a good faith effort to meet the requirements of HB 1298 and the goals of the Wildlife Guidelines. The Division of Wildlife's involvement in the rulemaking process has, in our view, represented a transparent, science-based effort to meet HB 1298's mandate of minimizing adverse impacts to wildlife while avoiding excessive regulatory burdens on affected industries. We believe that any final rule should incorporate the following minimum elements to ensure consistency with the objectives of HB 1298:

- In accordance with CDOW's current direction, we support a transparent, science-based approach for defining those habitats and geographical areas where CDOW consultation will automatically occur for issuance of drilling permits. Within consultation areas, CDOW should have clear authority to recommend conditions

of approval to address all important landscape needs, including but not limited to those key habitats identified in the CDOW "Species Impact Assessment." We also suggest consideration of a density threshold for consultation: absent a comprehensive development plan or applicable geographic area plan, consultation should also be considered for all spacing decisions or permit applications that would result in a density of greater than one well pad site per 320 acres within habitats of particular concern.

- There must be sufficient information-gathering requirements in the permitting process, with an obligation on applicants to provide the necessary information, to allow determination of where consultation is required and standard operating procedures and best management practices are applicable. Although survey requirements should certainly encourage the use of existing available CDOW and other data, and should recognize potential legal limits on access, the ultimate burden of providing adequate information to identify necessary SOPs and consultation requirements should rest on the permit applicant. Comprehensive development plans provide a useful opportunity to consolidate information-gathering, and could obviate the need for permit-specific survey information.
- Mandatory standard operating procedures must be put in place to provide adequate protection for wildlife in those large areas of the State not subject to consultation, and to provide a default level of protection to allow for a meaningful starting point for consultation. These standard operating procedures must include controls on both the siting and timing of development for those species and habitats at particular risk of adverse effects from oil and gas development. The February 26, 2008, draft Standard Operating Procedures proposed by CDOW substantially advance HB 1298's goals of reducing adverse impacts to wildlife by requiring avoidance of excessive impacts where feasible, minimizing impacts that cannot be avoided, and creating a reasonable baseline for the development of voluntary development plans and larger Geographic Area Plans. We recommend, however, that final Standard Operating Procedures explicitly incorporate by reference the requirements of other applicable State and Federal laws and regulations.
- Standard operating procedures should be automatically required for implementation in permit conditions where no CDOW-approved superseding plan or agreement providing alternative protection measures exists. These mandatory conditions should be subject to modification or waiver only under the following three CDOW-approved conditions: (1) when CDOW recommends, and COGCC adopts modification or waiver following an individualized consultation with the operator (and affected landowner if applicable); operators may elect to seek such modification at their discretion; (2) where avoidance, minimization, and mitigation measures in a CDOW- and COGCC-approved comprehensive development plan supersede the standard operating procedures for a given area;

(3) to the extent that a Commission-approved Geographic Area Plan provides basin- or field-specific procedures that would supersede SOPs within its geographic scope.

- In certain circumstances, comprehensive planning of siting and facilities provide greater benefits to wildlife than timing limitations on development alone. The appropriate context for such flexibility is in the development of comprehensive development plans, not through making restricted surface use and timing limitations optional. A vigorous default set of standards applicable in the absence of a comprehensive development plan will help not only to protect habitat, but also to create real incentives for the good-faith development of such plans. The pre-planning of well pad sites, pipeline routes, and maximum active well pads at any one given time offers a significant opportunity to reduce habitat fragmentation. The use of minimum, mandatory standard operating procedures to prescribe operational, siting, and timing standards protective of wildlife is necessary where no comprehensive plan exists, but the possibility of modification or elimination of those standards in favor of a comprehensive plan provides incentive for meaningful negotiation of voluntary plans. We also strongly encourage the inclusion in comprehensive development plans of quantitative performance standards as the basis for mitigation decisions, and monitoring requirements to evaluate the effectiveness of conservation measures.
- As contemplated by HB 1298, the rules should specifically address the Commission's authority to approve wildlife-protective conditions on siting and operation of oil and gas development in development agreements and unit orders, and should recognize the role of such orders in minimizing surface disturbance in situations involving multiple operators.
- HB 1298 recognizes the important role of private surface owners, and supports the development of a robust process for involving surface owners in the permitting and planning process and ensuring that these processes effectively address surface owner concerns with wildlife-protection measures. We support opportunities for landowners, in consultation with CDOW, to obtain modifications of particular SOPs where there are real conflicts between wildlife-protective conditions and other surface uses. Such an "opt out" process would adequately address HB 1298's intent and authorization for the Commission to prescribe minimum standards for oil and gas operations, as well as its provision on surface owner consultation and consent. We recommend that the Commission establish a dispute-resolution process to address situations where specific conflicts between wildlife-protective measures and other land uses arise. It was certainly not the intent of HB 1298 to increase the burden of split-estate mineral development on agriculture or other land uses, but neither is it the intent that development be able to "contract around" minimum wildlife standards absent a real conflict between wildlife protections and other surface uses. It is our

expectation that in the majority of cases, a dispute-resolution process would allow modifications of otherwise-applicable SOPs to address landowner concerns.

- We recognize that the geological, biological, economic, and social environment differs greatly throughout the state. The use of Commission-initiated, field- or basin-wide rules or orders to address the particular issues of distinct geographical areas is the appropriate means to address these differences. To address cumulative impacts to wildlife from multiple development activities, we recommend that the GAP process adopt quantitative objectives for maintaining functional wildlife habitat, including limits on maximum allowable active surface disturbance, and orderly timing or phasing of development across a landscape area, where applicable. In terms of specific locales, we believe that there is substantial agreement that the Piceance Basin's combination of substantial development potential, migratory wildlife herds, and extensive public land makes it an appropriate subject for such a basin-specific rule. We also will strongly support involvement by federal land management agencies in a joint process to ensure that wildlife protection standards are employed uniformly and effectively across all public and private lands.
- Given the long lifespan of oil and gas wells, and the vital role of immediate reclamation efforts, we strongly support a vigorous set of rules for interim as well as final reclamation, based on the approach used for the coal industry. Specifically, we support establishing quantitative vegetation goals for interim reclamation (cover and diversity of species), requiring monitoring, and enforcing reclamation requirements, whether through per-acre bonds or through conditioning future permit issuance on successful reclamation.

Thank you for the opportunity to comment.

Sincerely,



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