

APPENDIX D

PROTECTION OF WILDLIFE RESOURCES

1201. IDENTIFICATION OF WILDLIFE SPECIES AND HABITATS

Prior to the preparation of a Comprehensive Drilling Plan or the submittal of a Form 2A for a proposed new oil and gas location, an operator shall review the Sensitive Wildlife Habitat map and the Restricted Surface Occupancy map maintained by the Commission on its website and attached as Appendices VII and VIII to determine whether the proposed oil and gas location falls within Sensitive Wildlife Habitat or a Restricted Surface Occupancy area. The operator shall include this determination in the Form 2A or Comprehensive Drilling Plan.

1202. CONSULTATION

- a. The purpose of consultation under Rule 306.c is to allow the Director to determine whether conditions of approval are necessary to minimize adverse impacts from the proposed oil and gas operations in the identified sensitive wildlife habitat or restricted surface occupancy area, in an order increasing well density, or in a basin-wide order involving wildlife resource issues and to evaluate requests for variances from the provisions of the 1200-Series Rules. For purposes of this rule, minimize adverse impacts shall mean wherever reasonably practicable, to (i) avoid adverse impacts from oil and gas operations on wildlife resources, (ii) minimize the extent and severity of those impacts that cannot be avoided, (iii) mitigate the effects of unavoidable remaining impacts, and (iv) take into consideration cost-effectiveness and technical feasibility with regard to actions taken and decisions made to minimize adverse impacts to wildlife resources, consistent with the other provisions of the Act.
- b. Unless excepted as set forth in Rule 1202.d, when a proposed new oil and gas location is located in sensitive wildlife habitat or a restricted surface occupancy area, the Colorado Division of Wildlife shall consult with the operator, the surface owner, and the Director in accordance with Rule 306.c prior to approval of a Form 2A to identify possible conditions of approval.
- c. Any conditions of approval resulting from such consultation shall be guided by the list of Best Management Practices for Wildlife Resources maintained on the Commission website. In selecting conditions of approval from such Best Management Practices or other sources, the Director shall consider the following factors, among other considerations:
 - (1) The Best Management Practices for the producing geologic basin in which the oil and gas location is situated;
 - (2) Site-specific and species-specific factors of the proposed new oil and gas location;
 - (3) Anticipated direct and indirect effects of the proposed oil and gas location on wildlife resources;
 - (4) The extent to which conditions of approval will promote the use of existing facilities and reduction of new surface disturbance;
 - (5) The extent to which legally accessible, technologically feasible, and economically practicable alternative sites exist for the proposed new oil and gas location;
 - (6) The extent to which the proposed oil and gas operations will use technology and practices which are protective of the environment and wildlife resources;
 - (7) The extent to which the proposed oil and gas location minimizes surface disturbance and habitat fragmentation;

- (8) The extent to which the proposed oil and gas location is within land used for residential, industrial, commercial, agricultural, or other purposes, and the existing disturbance associated with such use; and
- (9) Permit conditions, lease terms, and surface use agreements that predate December 11, 2008.

d. Consultation under Rule 306.c shall not be required if:

- (1) The Director or Commission has previously approved a Form 2A or Comprehensive Drilling Plan which includes the proposed new oil and gas location;
- (2) The Colorado Division of Wildlife has previously approved, in writing, a wildlife mitigation plan or other wildlife protection or conservation plan that remains in effect for the area that includes the proposed new oil and gas location and the oil and gas location is in compliance with such plan;
- (3) The operator demonstrates that the identified habitat and/or species, where applicable, is not in fact present to support the identified species and use, such as where the proposed oil and gas location is located in a high density area, designated pursuant to Rule 603.b, or within an incorporated homeowners association or city or town limits;
- (4) The proposed new well would involve a one-time increase in surface disturbance of one (1) acre or less per well site at or immediately adjacent to an existing well site;
- (5) The operator applies for and obtains a Commission order pursuant to Rule 503 providing that there will not be more than three (3) well sites per section, with ground disturbing activity during the period from January 1 to March 31 (or other biologically appropriate alternative period up to ninety (90) consecutive days as determined by the Director for bighorn sheep winter range, elk production areas, bald or golden eagle nest or roost sites, columbian or plains sharp-tailed grouse production areas, greater or Gunnison sage grouse production areas, black-footed ferret release areas, or lesser prairie chicken production areas) limited to one (1) such well site, as determined by the Director. This exemption from consultation shall not apply to operations in occupied greater sage grouse sensitive wildlife habitat in Moffat, Routt, or Jackson Counties or in occupied Gunnison sage grouse sensitive wildlife habitat in Delta, Mesa, Gunnison, San Miguel, Dolores, or Montezuma Counties;
- (6) The Director grants a variance pursuant to Rule 502.b; or
- (7) The Colorado Division of Wildlife waives the consultation requirement.

e. No permit-specific condition of approval for wildlife habitat protection under this rule shall be imposed without surface owner consent, including any permit-specific conditions for wildlife habitat protection that modify, add to, or differ materially from the general operating requirements in Rules 1203 and 1204. If the surface owner fails to consent to any such permit-specific condition of approval, then the parties shall consult with the surface owner regarding alternative conditions of approval acceptable to the surface owner.

1203. GENERAL OPERATING REQUIREMENTS IN SENSITIVE WILDLIFE HABITAT AND RESTRICTED SURFACE OCCUPANCY AREAS

a. **General Operating Requirements.** Within sensitive wildlife habitat and restricted surface occupancy areas, operators shall comply with the operating requirements listed below.

- (1) During pipeline construction for trenches that are left open for more than five (5) days and are greater than five (5) feet in width, install wildlife crossovers and escape ramps where the trench crosses well-defined game trails and at a minimum of one quarter (1/4) mile intervals where the trench parallels well-defined game trails.
- (2) Inform and educate employees and contractors on wildlife conservation practices, including no harassment or feeding of wildlife.
- (3) Consolidate new facilities to minimize impact to wildlife.
- (4) Minimize rig mobilization and demobilization where practicable by completing or re-completing all wells from a given well pad before moving rigs to a new location.
- (5) To the extent practicable, share and consolidate new corridors for pipeline rights-of-way and roads to minimize surface disturbance.
- (6) Engineer new pipelines to reduce field fitting and reduce excessive right-of-way widths and reclamation.
- (7) Use boring instead of trenching across perennial streams considered critical fish habitat.
- (8) Treat waste water pits and any associated pit containing water that provides a medium for breeding mosquitoes with Bti (*Bacillus thuringiensis v. israelensis*) or take other effective action to control mosquito larvae that may spread West Nile Virus to wildlife, especially grouse.
- (9) Use wildlife appropriate seed mixes wherever allowed by surface owners and regulatory agencies.
- (10) Mow or brushhog vegetation where appropriate, leaving root structure intact, instead of scraping the surface, where allowed by the surface owner.
- (11) Limit access to oil and gas access roads where approved by surface owners, surface managing agencies, or local government, as appropriate.
- (12) Post speed limits and caution signs to the extent allowed by surface owners, Federal and state regulations, local government, and land use policies, as appropriate.
- (13) Use wildlife-appropriate fencing where acceptable to the surface owner.
- (14) Use topographic features and vegetative screening to create seclusion areas, where acceptable to the surface owner.
- (15) Use remote monitoring of well production to the extent practicable.
- (16) Reduce traffic associated with transporting drilling water and produced liquids through the use of pipelines, large tanks, or other measures where technically feasible and economically practicable.

b. **Exceptions.** If the operator believes that any of the foregoing operating requirements should be waived for any proposed oil and gas location, it shall so specify in a Form 2A for Director consideration.

1204. OTHER GENERAL OPERATING REQUIREMENTS

- a. The operating requirements identified below shall apply in all areas.
- (1) In black bear habitat west of Interstate 25 and on Raton Mesa east of Interstate 25, operators shall install and utilize bear-proof dumpsters and trash receptacles for food-related trash at all facilities that generate such trash.
 - (2) In designated Cutthroat Trout habitat, as identified on the Colorado Division of Wildlife Species Activity Mapping (SAM) system, operators shall disinfect water suction hoses and water transportation tanks withdrawing from or discharging into surface waters (other than contained pits) used previously in another river, lake, pond, or wetland and discard rinse water in an approved disposal facility. Disinfection practices shall be repeated after completing work or before moving to the next water body. Disinfection may be performed by removing mud and debris and then implementing one of the following practices:
 - A. Spray/soak equipment with a disinfectant solution capable of killing whirling disease spores; or
 - B. Spray/soak equipment with water greater than 140 degrees Fahrenheit for at least 10 minutes.
 - (3) To minimize adverse impacts to wildlife resources, plan new transportation networks and new oil and gas facilities to minimize surface disturbance and the number and length of oil and gas roads and utilize common roads, rights of way, and access points to the extent practicable, consistent with these rules, an operator's operational requirements, and any requirements imposed by federal and state land management agencies, local government regulations, and surface use agreements and other surface owner requirements, and taking into account cost effectiveness and technical feasibility.
 - (4) Establish new staging, refueling, and chemical storage areas outside of riparian zones and floodplains.
 - (5) Use minimum practical construction widths for new rights-of-way where pipelines cross riparian areas, streams, and critical habitats.
- b. **Exceptions.** If the operator believes that any of the foregoing operating requirements should be waived for any proposed oil and gas location, it shall so specify in a Form 2A for Director consideration.

1205. REQUIREMENTS IN RESTRICTED SURFACE OCCUPANCY AREAS

- a. Operators shall avoid Restricted Surface Occupancy areas to the maximum extent technically and economically feasible when planning and conducting new oil and gas development operations, except:
- (1) When authorized following consultation under Rule 306.c.(3);
 - (2) When authorized by a Comprehensive Drilling Plan;
 - (3) Upon demonstration that the identified habitat is not in fact present;
 - (4) When specifically exempted by the Colorado Division of Wildlife; or
 - (5) In the event of situations posing a risk to public health, safety, welfare, or the environment.

- b. As set forth in Rule 1205.a, new ground disturbing activities are to be avoided in Restricted Surface Occupancy areas, including construction, drilling and completion, non-emergency workovers, and pipeline installation activity, to minimize adverse impacts to wildlife resources. Production, routine maintenance, repairs and replacements, emergency operations, reclamation activities, or habitat improvements are not prohibited in Restricted Surface Occupancy areas. Notwithstanding the foregoing, non-emergency workovers, including uphole recompletions, may be performed with prior approval of the Director on a schedule that minimizes adverse impacts to the species for which the restricted surface occupancy area exists.

- c. **Applicability.** The requirements of Rule 1205 are not applicable to Applications for Permit-to-Drill, Form 2, or Oil and Gas Location Assessments, Form 2A, which are approved prior to May 1, 2009 on federal land or April 1, 2009 on all other land. The requirements of Rule 1205 are also not applicable until January 1, 2010, for any proposed oil and gas location in a Restricted Surface Occupancy area where the operator has in good faith initiated and is diligently pursuing consultation on the proposed oil and gas location begun prior to May 1, 2009 on federal land or April 1, 2009 on all other land, pursuant to Rule 306.c or Rule 216.