

**BEFORE THE OIL AND GAS CONSERVATION COMMISSION
STATE OF COLORADO**

IN THE MATTER OF CHANGES TO THE)	CAUSE NO. 1R
RULES AND REGULATIONS OF THE OIL)	
AND GAS CONSERVATION COMMISSION)	DOCKET NO. 0803-RM-02
OF THE STATE OF COLORADO)	

**COLORADO CATTLEMEN’S ASSOCIATION, COLORADO FARM BUREAU,
COLORADO LIVESTOCK ASSOCIATION, COLORADO PORK PRODUCERS
COUNCIL, COLORADO HORSE COUNCIL, COLORADO WOOL GROWERS
ASSOCIATION, COLORADO DAIRY PRODUCERS, ROCKY MOUNTAIN
FARMERS UNION¹ AND COLORADO CORN GROWERS ASSOCIATION**

ALTERNATE PROPOSALS ON WILDLIFE AND CONFIDENTIALITY

The Colorado Cattlemen’s Association, Colorado Farm Bureau, Colorado Livestock Association, Colorado Pork Producers Council, Colorado Horse Council, Colorado Wool Growers Association, Colorado Dairy Producers, Rocky Mountain Farmers Union and Colorado Corn Growers Association collectively (“Colorado Agriculture”) by and through its undersigned counsel, Holsinger Law, LLC, hereby respectfully submits these Alternate Proposals.²

I. Introduction

Colorado Agriculture appreciates the opportunity to present its Alternate Proposals on Wildlife and Confidentiality and hereby reiterates its concerns and as evidenced by its previous pleadings, comments and correspondence.

A. Colorado Agriculture Alternate Proposal on Wildlife

There are important qualifiers to the Colorado Oil and Gas Conservation Commission’s (Commission) new-found statutory charge to balance development with wildlife conservation. For example, the Commission is to minimize adverse impacts to wildlife “wherever reasonably practicable.” § 34-60-103(5.5) C.R.S. Best Management Practices (BMPs) and other “reasonable measures to conserve wildlife resources,” are to be implemented where “reasonably practicable.” § 34-60-128(3)(c) C.R.S. BMPs related to surface disturbances and habitat fragmentation are to be “appropriate.” § 34-60-128(3)(d)(III) C.R.S. Finally, the Commission is to “take into consideration cost effectiveness and technical feasibility” of actions and decisions related to wildlife resources. § 34-60-103(5.5)(d) C.R.S.

¹ Rocky Mountain Farmers Union joins in some, but not all, of the concerns expressed by the remaining eight groups that comprise Colorado Agriculture.

² Mr. H.B. Shaeffer has expressed that he agrees with Colorado Agriculture’s alternate proposals. The Colorado Association of Home Builders and the National Association of Industrial and Office Properties do not oppose Colorado Agriculture’s alternate proposals.

HB 07 1298 provides that landowners must consent to measures related to wildlife protection:

- (b) Provide for commission consultation and consent of the affected surface owner, or the surface owner's appointed tenant, on permit-specific conditions for wildlife habitat protection. . . .

§ 34-60-128(3)(b) C.R.S.

Commission action pursuant to the Rules could adversely impact the ability of private landowners to manage and operate their own lands as they see fit. This is neither reasonable nor practicable. It is certainly not appropriate.

As Messrs. Carlyle Currier and Terry Fankhauser testified in these proceedings, it is burdensome for the landowner to have to consult to avoid timing limitations or other permit-specific conditions. It should not be the landowner's obligation to negotiate his or her way out of such conditions; the burden should be on the Commission to obtain the landowner's consent.

B. Series 100 Alternate Definitions

WILDLIFE MITIGATION shall mean appropriate, reasonably practicable best management practices (BMPs) that compensate for adverse impacts to wildlife resources, including, as appropriate, habitat enhancement, on-site mitigation, off-site mitigation, or wildlife mitigation banking. The Commission shall take into consideration cost effectiveness and technical feasibility of actions and decisions related to wildlife mitigation. Wildlife mitigation shall be consistent with the applicable existing surface use agreements (SUAs) between an operator and a surface owner. On-site mitigation may occur regardless of the terms of an existing SUA with the surface owner express, written consent. Such consent shall take the form of an amendment to the existing SUA negotiated by the surface owner and the operator. To the extent on-site wildlife mitigation is not possible, practicable or cost-effective, an operator may pursue off-site mitigation.

OFFSITE MITIGATION shall mean compensating for adverse impacts to wildlife resources by replacing, or providing substitute, resources or environments. Offsite mitigation shall occur primarily through private action on public or private lands. Private action shall include, but not be limited to, habitat enhancement, changes to land management practices, conservation easements, wildlife mitigation banks and conservation land banks.

C. Alternate Proposal for Series 1200

Add to Section 1202. Purpose:

All Commission efforts herein to minimize adverse impacts to wildlife shall be consistent with the terms of existing oil and gas leases (OGLs) and surface use agreements (SUAs) in place on the surface owner's property or contingent upon the surface owner's express, written consent. To the extent on-site wildlife mitigation is not possible, practicable or cost-effective, an operator may pursue off-site wildlife mitigation.

D. Explanation

Private landowners should remain free to contract with private companies through OGLs and SUAs without government interference.

The ability to mitigate offsite can create better opportunities to develop the resource and provide more benefits to fish and wildlife than through seasonal stipulations. For example, with the use of offsite mitigation in the Pinedale Anticline, one company implemented significant habitat improvements offsite for every acre of disturbance. The company was then allowed to conduct year-round drilling in mule deer winter range and sage grouse habitats and to increase the number of well pads on its given location.

Offsite mitigation may better serve wildlife resources than seasonal restrictions on drilling. Offsite mitigation could also help ensure that sensitive and candidate species remain off the Endangered Species Act list. Innovative tools such as conservation land banks could also be considered as part of the larger discussion. Used in California and Nevada to mitigate impacts from development, land banks provide a financial incentive to manage private lands and create a market for transferable mitigation credits much like wetlands banking. In the case of oil and gas development, land banks could be established where wildlife benefits are most likely to occur. For example, a company that disturbs 100 acres of sage brush could provide incentives to private landowners or federal permittees to improve wildlife habitat on corresponding acreage. This incentive could potentially be matched by Land and Water Conservation Funds or the Section 6 (of the Endangered Species Act), the Cooperative Endangered Species Conservation Fund, conservation easements, or state funds.

Because federal and state agency budgets are often insufficient to manage the lands already under their control, off-site mitigation should be market-driven and primarily aimed at private actions on private and public lands.

II. Confidentiality

Colorado Agriculture has real concerns that information and data collected on private lands could be disclosed to agencies and the public. Much of this information and data is of a highly sensitive or personal nature. Colorado Agriculture seeks to prevent misuse of information that could damage the health, safety, and financial well-being of individual landowners. The U.S. Supreme Court has recognized a right of privacy implicit in the First, Fourth, Fifth, Ninth, and Fourteenth Amendments of the U.S. Constitution. Moreover, the Colorado Supreme Court has recognized an individual's reasonable

expectation of privacy from government intrusion in the Fourth Amendment of the U.S. Constitution and Article II, § 7 of the Colorado Constitution.

In addition to the Alternate Proposal below, Colorado Agriculture respectfully requests the commitment of the Commission to work with Colorado Agriculture and its members to pass legislation to address these concerns in the 2009 Colorado legislative session. Colorado Agriculture notes that similar legislation was passed to address privacy concerns with respect to information on livestock in HB 08-1236.

A. Alternate Proposal on Confidentiality

Add to Section 205. Access to Records:

The Commission considers information and data related to wildlife resources collected on private lands a trade secret, privileged information, and confidential commercial information, the disclosure of which would be contrary to the public interest. See § 24-72-204 C.R.S.

Respectfully Submitted this 30th day of July, 2008:

s/ Kent Holsinger

s/ Laura L. Chartrand

Kent Holsinger, No. 33907
Laura Chartrand, No. 39220
Holsinger Law, LLC
104 Broadway, 3rd Floor
Denver, Co. 80203
Phone: (303) 722-2828
Fax: (303) 496-1025
Email: kholsinger@holsingerlaw.com
lchartrand@holsingerlaw.com

Attorneys for Colorado Cattlemen's Association, Colorado Farm Bureau, Colorado Livestock Association, Colorado Pork Producers Council, Colorado Horse Council, Colorado Wool Growers Association, Colorado Dairy Producers, Rocky Mountain Farmers Union and Colorado Corn Growers Association