

Colorado Oil & Gas Conservation Commission
HB 1298 Rulemaking Activity –Wildlife Working Group
February 12, 2008
Meeting Summary

Facilitator – in meetings with Colorado Farm Bureau to discuss landowner input in this consultation process

Industry – presents an alternative consultation process proposal
(see attachment for diagram)

Biggest issue that needs to be resolved - will landowner approval be needed at mediation stage (do they have a veto in the process?)

Facilitator – the regulation cannot be more restrictive on landowner rights than the statute

DOW – the point of a consultation is to allow the DOW to take a property specific look at what species are present and possibly negotiate a compromise that will do the most good for wildlife – possibly negotiate removing some SOPs in favor of some BMPs

Landowners – have an issue with the overriding SOPs – why not put everything into BMPs for negotiation purposes?

Facilitator – if negotiation fails is it the landowner opinion that no wildlife protections would exist at that point?

Landowner – no not necessarily – suggest a working group to discuss the SOP plan – landowners might agree to an SOP document that is binding to a certain degree – through discussion could achieve that agreement

Industry – this process would work for one well – but what about multiple wells? – would be more complex with more landowners as the area grows

Environmental – suggestion for annual review to take a look at the process to see if it is working – involve public input at that point

Industry – this needs to be an ownership process for the DOW they need to assess and take responsibility for what is working or not working

Facilitator – this proposal will require additional FTE for DOW

DOW – original proposal at legislature was that 15-20% of all applications would require DOW to consult – with this new proposal it looks like it is going to be more like 90% - this proposal puts DOW in a really tough situation with no baseline to fall back on – especially if the consult needs to fit into a specific timeline – the SOP was originally designed to allow for a fallback given the time constraints

Local Government – what happens at the expiration of the permit – does DOW continue to monitor? What happens after this whole process is negotiated – the conditions and all agreements go away after the permit terminates – if oil and gas leaves entirely does landowner still have these restrictions on the land? Seems like a lot of effort on the front end but how does it carry forward?

Facilitator – no this is oil and gas specific – all conditions relate only to the permit and oil and gas operations

DOW – the consultation map would probably trigger about 40% consult – the industry proposal requires a two step DOW review/consult process 1) informal review -are BMPs initially proposed by industry adequate and 2) if not then go back to original consult process

Industry – did not see how DOW would not have that same burden in the original plan – in this proposal industry envisions a simple review format instead of having to take a lot of technical documents out of the form 34 as previously envisioned

DOW – agree that if we can clear out a lot of these at the BMP review stage – then yes this will probably be more efficient – but the front end work at the beginning is a concern

Landowner – is there a federal nexus with the ESA and monitoring? Full reclamation could be 25 years – who is going to go out and do this monitoring

DOW – we are not going to go out and inventory on all these properties on an annual basis – to see if something new shows up on the property (ex. ESA species)

OGCC – after the well is drilled – it will be an ongoing oil and gas operation – OGCC will be concerned about the safety of the operation – if an endangered species is found can't just suggest that the operation be shut down – company has to maintain the right to come out and service the well even during reclamation – routine visits to check production and service calls

DOW – if there is an ESA issue then everyone will have to deal with what the USFWS does

Facilitator – human health and safety will trump wildlife issues

Industry – if nothing (habitat, species) is found and it is not a consult area then envision that they would cut through a lot of this process (see diagram attachment)

Environmental – if you get a permit that includes BMPs who enforces this permit?

OGCC – we have a staff that goes out and inspects well sites right now and staff is growing as well sites have grown

Environmental – what about wildlife specific violations – who will document this?

OGCC – staff is capable of doing this

Facilitator – OGCC staff has grown 50% in last 2 years – and has been approved for even more – but have yet to deal with an increase in DOW staff to accommodate this process

Local Government – OGCC often gets called out due to a complaint – OGCC has good response on this – but suggest that we also need to have public awareness out there about permit conditions – this way the public might informally be able to monitor what’s going on out there?

Industry – monitoring responsibilities need to lay with DOW staff - need a research component for resources we’re dealing with

DOW – we are doing the research – particularly mule deer and sage grouse impacts – but are not going to be able to monitor the individual permits for compliance with BMPs or wildlife effects

Industry – DOW is not monitoring SOPs and BMPs on an individual basis?

DOW – no – not on an individual basis – will be monitoring the populations and the regions to see how the species are reacting – among other issues, DOW does not have access to private property to monitor on an individual basis

Facilitator – DNR has requested 1.5 million from severance tax for monitoring

Industry – when BLM permits projects – they do have biologists that go out to monitor species – as part of NEPA – if we are not going to do this in this process then this is a concern to operators because these SOPs will be binding and will need to re-visit and see if they are working

DOW – cannot answer property specific questions – our general research will have to suffice to answer these questions

Environmental – concern with the process that it be at a scale that the DOW can handle – if they feel they can’t do it then negates the whole idea

Facilitator – trying to develop a pilot or two with operators to try the landscape planning option

Industry – cannot plan a landscape approach if you’re working with feds, state, split estate owners, etc.

Facilitator – the state can try to standardize state and federal regulations going forward – BLM White River land use plan still open as well as several others for comment – we

will be pulling state and federal standards over the next few weeks to make sure they agree

Environmental – is the well staking and bio assessment a standardized process?

Industry – would focus on the habitat suitability – not actually viewing the animal there – more of a qualitative assessment – qualitative indicators should take precedence in this process

Landowner – worried that a landscape review process might result in more focused development in certain areas – is there a way that landowners could submit a voluntary inventory sheet of habitat that they are aware of?

Facilitator – the onsite survey by the operator would be basically all the information we would have – cannot say that DOW would come out and verify

Environmental – what are the standards for mitigation? This is a fairly complex issue biologically

Industry – suspect DOW would retain authority to advise/recommend on mitigation – particularly in the consult process – in light of complexity can you really define mitigation? Should be developed based on an individual site?

Facilitator – we're close to coming to a consensus in this stakeholder process – final big issue is the need to work out kinks with landowners

Landowner – need to know what SOPs are upfront – there are probably some that landowners can deal with but will need to go through them

OGCC – there is a sub-group of the process group meeting on 2/13 at 9am to discuss CDPs

Local Government – 2 years is too long for regulations to go into effect – counties will be seeing an increase in permits – if process needs to be adjusted later fine – but something needs to be in place now

Discussion of wetlands definitions

Industry Definition:

Areas presenting a predominance of vegetation typically adapted to oxygen deficient conditions as a result of inundation or saturation by naturally occurring surface water or near surface ground water present under normal environmental variables.

Wetlands shall be classified by the Cowardin et. al. (1979) classification system

Delineation shall focus on vegetation predominance.

Delineation may be done remotely by recent aerial photography with a resolution of no less than 1 m.

All data shall be obtained and rendered in UTM Zone 13 NAD83

Stakeholder proposed definition:

Wetlands are lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water.... Wetlands must have one or more of the following three attributes: (1) at least periodically, the land supports predominately hydrophytes, (2) the substrate is predominately undrained hydric soil, and (3) the substrate is nonsoil and is saturated with water or covered by shallow water at some time during the growing season of each year.

Industry – does not want to include soil in the definition – focusing more on vegetation

Environmental – need to take invasive species into account and effects of grazing, drought, etc. – want to make sure to include the language “naturally occurring” – left out of industry definition?

DOW – purpose of discussion about wetlands – was to provide a way to define something that is readily identifiable as a wetland so these areas could be avoided – both definitions are streamlined definitions but need to take into consideration the things that matter for wildlife in the field

Two most important things for wildlife:

Seasonally standing water

Vegetative characteristics

DOW – jurisdictional wetland – not an issue – don’t want to get into this and wetland classification – state does not have authority to enforce wetland protections

Industry – mapping of wetland may trigger these considerations – there would be a potential that this type of wetland restriction could be put in place- so landowners would oppose?

DOW – preference in language is “for purposes of avoidance under HB 1298 wetlands = standing water for at least part of year and vegetation” – not a classical definition but restricts implications to the things that matter most to wildlife – *DOW will assess and come back with a language proposal*

Environmental – can we include anything voluntary in the BMP to address endangered plants?

Facilitator – must be under vegetation and with respect to wildlife?

Industry – doesn’t want to see plants involved – would like to see it restricted to wildlife – plants do not constitute wildlife habitat

Facilitator – get the list to us – but there will need to be a nexus for wildlife and wildlife habitat – plants beyond our jurisdiction

DOW – have no legal authority to enforce anything to do with plants – if there are mapped locations of endangered plants it could be brought into the discussion – however not realistic to make a connection between these plants and wildlife impacts

Industry – concern about DOW definition (see below) replacing the aquatic bullets under the NSO heading in the SOP document – it is too broad

Areas within 300 feet of the ordinary high water mark of any watercourse, lake bed, sinkhole, ephemeral pool, playa lake, or wetland

DOW – still working on this definition – will be specified further – trying to get a final SOP document ready by the end of the week

Facilitator – will distribute this document to everyone

Industry – would like to have another meeting to go through this revised SOP document step by step once its released

Facilitator – DOW and BLM will work together for “exception” language

DOW – really the purpose of that language is that SOPs apply unless you go to consultation – from a wildlife standpoint – either you agree to the SOPs or you go to a consultation – THAT is the exception – DOW does not want to get into specifics of opting in and out and approving roads, etc. – OGCC will have authority for this level of detail – if industry does not agree with DOW SOP proposals then goes to consult

Industry – in the SOP seasonal timing restrictions language – frequently referenced language is “no development allowed” – concerned about what this means

DOW – presumed it would mean construction and development activity – agree do need some consistency and definition of this language

Industry – concern about NSO language – you cannot occupy area at all whatsoever?

Industry – suggestion to call it “controlled” surface occupancy?

Environmental – agree that it is not going to be NSO – call it what it really is

Industry – when agencies get together to consider exceptions – consider everything the operators have done to “get small” – in the end if the project cannot move forward without year round drilling – this needs to be considered

Facilitator - in scenarios where operator needs to go year round then a BMP list would be available to select from to get the same wildlife protections

Industry – there may be instances where year round drilling is necessary to be economically viable

DOW – the filter DOW will use is whether there is something else that can be done to achieve those wildlife protections

Facilitator – yes we will adjust the language to reflect the idea of controlled surface occupancy

DOW – those situations where there is absolutely no agreement and would present the case for off site mitigation – may go back to OGCC for resolution

Facilitator – we will hold another meeting, February 19, 2008, 1-5pm, 6060 Broadway, Bighorn Conference Room

Agenda: Discussion of revised SOP document, Other Issues.