

Colorado Oil & Gas Conservation Commission
HB 1298 Rulemaking Activity –Wildlife Working Group
February 26, 2008
Meeting Summary

Review of Industry comments to SOP document

Facilitator - surface owners (whether split or not) will be treated the same way with regards to the SOP document – not creating two different standards for split estate and owners

Industry – this implies that landowner has veto power over this
(Referring to this language: *All data from wildlife surveys performed will be forwarded to CDOW on completion. When expressly requested by the surface owner, data provided to CDOW will only be used for oil and gas permitting activities.*)

Industry – for federally listed species – who does the consult UFWS or DOW

DOW – probably 2 consults – DOW can't usurp section 7 consultation

Industry – most companies already consulting with Division – seems like a regulatory burden – is there some way to streamline this?

DOW – not viewed as another layer of additional work – in most cases restrictions will come from USFWS for these species

Industry – propose to survey out 50 feet from the edge of the disturbance for prairie dog colonies

Industry – concern about forwarding data from wildlife surveys to DOW – landowner issues with this?

DOW – hope this is resolved with new language from DOW (see above)

Facilitator – regarding CORA requests for this information – Attorney General's office thinks that it would not be revealed because it would be contrary to public interest – have made this argument for not revealing lynx den sites – this might not be quite as strong an argument as the lynx though so may require modification of CORA

Environmental – why keep transportation bullet in there at all if it says “to the extent possible”

Industry – this language is not about making money or costing money – instead the “extent possible” is a matter of negotiating around multiple redundant regulatory processes and how long it takes to negotiate a variety of issues

Industry – transportation plans are too subjective – we are dealing with landowners, BLM – no one has the final call on road placement – need to have the flexibility

Environmental – but this is totally open ended – there needs to be some transparency

OGCC – we do have rules that cover transportation plans – this may be a little redundant

DOW – we understand that – if this bullet was eliminated it wouldn't necessarily change anything – but DOW feels there is a big impact to wildlife in dealing with roads – just want to make sure the issue is on the table – would be fine removing the language but since industry came up with alternative language we have accepted it

Industry – concerned about increasing the footprint of the pit by creating ramps for wildlife escape

(Referring to language: *Exclude wildlife from pits through pit fences, netting or other effective methods and construct escape ramps to ensure that wildlife and livestock can escape from pits.*)

DOW – often fences are not maintained or wildlife get around them – needs to be a way (ramps) for wildlife to get out besides tranquilizing and lifting the animal out

DOW – we will discuss this internally – this may be a valid argument – we may not need to require ramps

Industry – suggest that sometimes water quality would preclude mosquito activity – might need some flexibility in this bullet?

(Referring to language: *Treat waste water pits and/or any associated pit containing water with Bti (Bacillus thuringiensis v. israelensis), commonly known as Mosquito Dunks, or take other effective action to control mosquito larvae that may spread West Nile Virus to wildlife, especially grouse*)

Discussion of possibilities including: pit monitoring for salinity and mosquito potential and/or only restrictions for pits that are actually a breeding ground

DOW – will discuss the issue internally – do not want to restrict it solely to sage grouse habitat though

Army Corps – have added a regulation to address invasive species on equipment but it is fairly general – do not think this one is duplicative – in fact approve of it because it is more specific

(Referring to language: *Disinfect heavy equipment, hand tools, boots and any other equipment used previously in another river, lake, pond, or wetland, with one of the following practices....see SOP document*)

Industry – include additional bullet – that includes any other method for disinfecting as approved by DOW

DOW – yes – we will add that language

****Wildlife Crossover bullet****

Industry – what does Division want to see as far as width requirements for providing these crossovers – need to consider those sections that are open for an extended period of time – the transmission lines are the ones that might be causing the problems with the big trenches

(Referring to language: *Install wildlife crossovers and escape ramps at maximum 1/4 mile intervals and at well defined game trails during pipeline construction.*)

DOW – would you be more comfortable with a time component? Add in if trench is open for a certain amt of days then a crossover is required?

Industry – might take just as long to construct the ramp as would be to finish work and cover the pipeline

DOW – the smaller and shorter the pipeline they probably are covered immediately – but longer areas may have farther advance time – concerned about these trenches being left open all winter

Industry – most pipes laid within a 2 foot wide trench

DOW – the real concern is that these pipelines get half finished and then block migration corridors – if the pipes get covered over within a matter of days it is probably not a problem

Industry – think this is not a highly occurring problem – may be over-regulating – should consider whether there is a high probability of occurrence

DOW – hear the point – will discuss internally – can make some potential changes

Industry – concerned about how an inspector is going to interpret some of these regs without some guidelines – need to have clear language for enforcement purposes – not arguing with intent but want to make sure written correctly

(Referring to language: *Utilize bear-proof dumpsters and trash receptacles at all facilities west of Interstate 25 and on Raton Mesa east of Interstate 25, unless specifically exempted by CDOW*)

DOW – intent is to have these at work sites specifically – will work on the language to clarify

DOW – need some degree of standardization for reclamation and reclamation needs to be enforced – 2 important points are reclamation/enforcement and bonding

(Referring to language: *Group disturbance locations into reclamation units with consistent vegetation type, elevation, precipitation, and aspect, and determine appropriate reclamation goals for each reclamation unit. Post bonds in amounts sufficient to cover the cost of reclamation for all acreage disturbed by well pads, gathering lines, pipelines, and other oil and gas activities under jurisdiction of COGCC.*)

Industry – prefer to maintain these concepts in the 1000 series of regs

DOW – agree if they are in there we are fine with it – will work with OGCC on this

Industry – need to distinguish between interim reclamation and final reclamation – some of these standards are more important in final reclamation

Industry – cannot get too prescriptive in reclamation – should depend on land use – for example - grazing properties should have different standard – suggest letting OGCC further define in the rules

DOW – we discussed this in the additional regs group and alternatives were proposed and are posted on the website – these issues will go to rulemaking for additional discussion

Industry – okay with first three pages of SOPs being in reg because they are over-arching and general but feel that the timing limitations and restricted surface occupancy issues should be in BMPs

Facilitator – but this would then make all of that subject to landowner approval and thus voluntary? Is this what the legislature directed us to come out with? Does this achieve those goals? Legislation says promulgate standards...

Industry – we are promulgating standards by including the first 3 pages of SOPs (without timing restrictions or RSO language) and to include the consult process which was also an emphasis of the legislation

Industry – if timing slips and restricted occupancy are in regs they are more difficult to change

Facilitator – if industry owns property fee title – would they be able to exempt themselves from the first two pages?

Industry – if industry owns surface and minerals – then yes envision that they would be able to exempt themselves out if they saw fit

DOW – in the Division proposed process – DOW would NOT be consulting on all permits – industry proposal would require Division consultation on every permit – Division process designed to allow industry to accept SOP standards and move on with permit process – no Division involvement

Industry – putting industry in a position to negotiate OUT of these SOPs instead of IN to the SOPs

DOW – yes – exactly – give industry the opportunity to review the timing stips and decide if they can live with it and move on with the process without consulting with Division – we are providing some statewide standards and if you disagree with them then consult

Industry – disagree with timing stips and RSOs – do not believe this was intent of legislation

Industry – understand there is some level of protection here – but can there be reference to some guidance that is outside of regulation?

DOW – but how would we enforce this? If someone does not abide by the “guidance” and its discovered – what do we do then?

Facilitator – need to decide what happens when we don’t agree in the consult process

DOW – if we cannot come to agreement what happens? We see 4 possibilities:

Binding arbitration

Fall back on SOPs

Surface Owner prevails

Appeal to oil and gas commission

Industry – afraid that if fallback is SOPs then Division can just say – we don’t agree and walk away from the table and require them

Facilitator – agree that is not acceptable – OGCC would have to have an appeal process for this situation

Industry – if negotiation ends negatively – need to have a time period for an appeal – all of this must happen within the 85 day process – concerned that OGCC docket could get backlogged if this is the case

Facilitator – could provide a hearing officer instead of requiring it to in front of OGCC?

Discussion of Timing Limitations

Industry – concern about incorporating “emergency” language – there are force majeure issues, refrac issues – if wells are taken out of production while timing stips in place and can’t get in to take care of “emergency” situations

DOW – need to define what we mean as maintenance?

Industry – yes

DOW – what we were trying to achieve with this language is that things that can be planned for should not occur during these times

Landowners – concerns with timing limitations on private land – these stip are counter to when landowners want industry on the property for growing season restrictions – how will this work on private land situation?

DOW – when have multiple species on private land would have to negotiate and DOW might have to give up some things

Facilitator – for anything beyond the SOPs landowner consent would be the final say

Landowners – if timing stip override everything then this process will have major conflict – because landowners might want industry out there in the winter

DOW – will look at flexibility for the “winter concentrations” language for bald eagles

DOW – RSO areas – envision that there are 2 situations that would allow access – if DOW permits it or if risk to human health and safety – that is all – will not be further defined

Environmental – can we add in federally listed or sensitive plants?

DOW – don’t think we can put that in rule since DOW does not have authority to regulate plants – but if the Division is aware of these then this can be considered in a consultation – cannot come from the DOW in the form of a reg

Environmental – can we add temporary or ephemeral wetland?

DOW – can’t get this definition perfect – already winnowed down the definition – playa lakes as defined = 28 in Colorado – this is generally a non-factor for wildlife in the state

Corps of Engineers – re-word to say surface water feature including wetlands?

DOW – we don’t want the definition to be all inclusive – we just want to include those wetlands that are most important for wildlife – that hold aquatic life on a year round basis

Environmental – would like playa added back in – even if there are only 28 – this should be a reason for it to be included – national programs online for protecting these

DOW – there is very little energy overlap in playa areas – and the only ones that we could consider are the officially mapped ones – you could go out after it rains and find several of these playas – just adds confusion?

Environmental – use the joint ventures definition for playas in the high plains – these are still centers of biodiversity with or without water

Industry – in NW area DOW would be consulting on this one more than any of the others combined (referring to wetland bullet)

Industry – what about wells already within 300 feet of the high water mark?

Rick – if wells are already within those buffer they will be grandfathered in

Landowners – happy with changes to data language released at request of landowners only in third bullet

DOW – the other issue is how far landowner approval rights go in this process

Facilitator – currently setback language is 150 feet from the property line for oil and gas operations – what is the landowner feeling on that?

Landowners – can't comment right now

Facilitator – is there anything less than surface owner veto that would be acceptable to landowners at this point?

Landowners – feel deference should always be paid to the private landowner – landowners are also looking to find the best well location – they house and feed most of the wildlife – don't think we would do anything contrary to their protection – but on the other hand want to say that well can't be in the middle of the cornfield

Facilitator – wrap-up – Division might take one more crack at this to incorporate today's comments – this will be distributed to the group. The dialogue on this will continue – but there will be a quiet period while rules are being drafted – however if there are ideas or concerns that occur to you Mike King is open to discussion – appreciate the professionalism brought to the table – has been an enlightening discussion – now have a much better understanding of the concerns, needs and values of constituents at the table

Landowners – appreciate the work of DNR and DOW – may still have some philosophical disagreements about some issues – but commend the DOW on the current document – appreciate the effort with the landowners thus far

Facilitator – if you submit comments – at a minimum Mike King will respond within a week to tell you how the issue was resolved

Industry – reiterates the thanks to DOW and DNR