

Colorado Oil & Gas Conservation Commission
HB 1298 Rulemaking Activity –Wildlife Working Group
February 5, 2008
Meeting Summary

Introduction, Announcements

Industry will have a “response” document to DOW proposed SOP document for next Tuesday (2/12)

Mike King has met with the Colorado Farm Bureau about SOP consultation and veto opportunities (for BMPs)

Process group update – mostly discussed GAP concept at the Feb. 5 meeting – some agreement that the first one developed would probably be for Piceance Basin

Need for a process solution in case of DOW, landowner, operator disagreement on any conditions

The process group facilitator feels that a resolution process can be incorporated into timeframes being discussed by process group – 85 days is the proposed standard for permit approval

Resume Discussion of SOP Document (where left off last Tuesday)

BASELINE SURVEYS AND DEVELOPMENT LIMITATIONS

DOW is in the process of re-writing the bullet referencing the survey and mapping of critical habitats and/or species – language will be distributed to the group as soon as available

ECONOMIZATION OF DEVELOPMENT

Industry – sometimes installing a pipeline is not practicable for transport of water – may be that a few truck trips have less impact than installing a pipeline

Industry – propose overriding statement “where economically and technically feasible” for all SOPs

Industry – wants to maintain flexibility, new technologies, creativity – feel that a consult process will allow for this rather than SOPs in rule

Facilitator – need to have something in place as a baseline in the event no agreement is reached in consultation

Industry – “limit rig moves” bullet – has conflicts with exploration vs. development; also surface owner or BLM may require operator to leave during a certain time period; also “initiate reclamation” language has problems – cannot reclaim right away in most cases – must wait for spring/summer

Industry/Environmental - Suggestion to make general statements in SOP and detail specifics in BMP document

Industry – concerned about SOPs overriding landowner consent – legal issue

Industry – AG opinion on taking?

Facilitator – general AG opinion on applicability of statute = can apply conditions of approval to APDs without it being considered a taking issue

Industry – due to short time frame for developing these rules – suggest inserting the language “in the absence of state, federal, SUA” regulations – then these SOPs apply

Industry has many issues with these SOPs – believes if we had 6 mths we could figure them out but do not have that kind of time – in the absence of time – suggest the above language

Industry/Environmental – Question whether there may be a force majeure issue?

ROAD DEVELOPMENT

Industry – don’t know ahead of time exactly where roads will be – can’t go across private property lines – need to have discussions with landowners

Industry – what is the DOW understanding for how long down the road that industry can look for development – reality is can’t even look 3 yrs down the line

DOW – you know what your lease picture is – what we’re asking for is in looking at conceptual holdings – where is the best place to put a road to access all areas – with the least amount of disturbance

Industry – a lot of activity driven by lease explorations – situation often arises whether we let a lease expire or drill it to save the lease – impacts predictability

DOW – suggests that if you do drill it to save the lease that you look at how you get in and out with least disturbance

Industry – it is in everyone’s best interest to minimize the disturbance because it minimizes the cost

Facilitator – can we agree that you plan before the road goes in – not penalized if adding another road – but planning to the extent possible?

Industry – suggest a statement to plan for wildlife management to the extent possible in placing roads

Industry – this is unenforceable as a rule

Environmental – the point is to have DOW have a say in deciding what is practicable and what is feasible – previously industry has been deciding this on their own

Landowner – concerned that SOPs trample over their rights as landowners

Facilitator – envision that landowner would have standing to request a consult as well – but if no agreement is reached then SOPs would apply

Landowner – then this would be a taking?

Landowner – where are the landowners rights in this? If it is an SOP area the landowner is out of luck and has no say?

DOW – if it's a consult area rules can be written to allow landowner to request consult – in many instances landowner consent would be required before DOW approval.

Local govt – split estate is a bigger issue than if owner owns mineral rights – negotiating power of all surface owners cannot be considered equal

Environmental – feel SOPs are designed to protect split estate issues since surface owners often not consulted on these issues

Industry – many times industry is forced to put a rig in an environmentally unfriendly location at the request of a landowner – industry is aware of the poor location and would prefer NOT to locate it there

Environmental – what is going to happen when we don't get through all of this information (SOPs/BMPs) because it is starting to look that way

Facilitator – may have to offer the opportunity for groups to present their own package/recommendations – if can't work through them to get everyone on the same page

Industry – for every SOP there will be an exception – to make everyone happy suggest that the consultation process be put in rules and what species need to be consulted for - everything else with distances and timeframes, etc. will be in BMP

DOW – we would rather have some places in the state (eastern plains) – where landowners may look over the SOP and stip and are okay with it because it is minimal. Agree SOPs need to be streamlined – but we need a baseline to take to OGCC – envision process to be – here are the baseline requirements - if you can deal with them great (no consult with DOW) – if you can't then there is an alternate process (consult)

Industry – okay with having a high level SOP document – agree they are probably needed – biggest issues are distances and timeframes being put in rules

DOW – don't want to mandate what species you consult on – want a minimum list of species with a minimum list of guidelines – if you can meet these guidelines then great – but if you can't then you consult on exceptions

Facilitator – need to decide whether there will be a rule or will there be a “gold book” – See two options moving forward:

1. DOW will want to move forward with rules of what SOPs would look like
 2. Industry will likely move forward with what BMPs and consult should look like
- OGCC will make final decision between the two options?

Local govt – what happens if landowner goes to the county and subdivides his property?

Facilitator – OGCC is meeting with Gunnison attorney to try and resolve this issue

DOW – For 1041 – Division is advisory for county land use issues
1298 will be law (statutory) not advisory

Facilitator – need to establish a negotiation process to address these issues

Local govt – suggest writing the LGD process into a consultation process

Environmental – See three cases of use for the SOPs - 1) SOPs for leases on federal land - would want most protective stip for these properties – these are public lands 2) SOPs for willing landowners who believe in wildlife protection or who can use them as leverage to improve negotiating 3) landowner who sees wildlife as interfering with their own interests would not want SOPs

DOW – if landowner doesn't want SOPs – then goes to consult – they are in the driver's seat – if the can't come to an agreement then goes to OGCC for decision

Sportsman – concerned that moving everything from SOP to BMP would then hinge protection on who is the best negotiator – wildlife protections would then be better in some places than in others – needs to be some baseline to protect across the board

Industry – is it possible to look through this document to see what DOW would consider to be the minimum SOPs?

DOW – most important are timing stip and NSOs – which were discussed yesterday (2/4) – the rest are nice to do rather than have to do – can come back with a more complete package

Representative Curry – in attendance – offers to shed some light on legislative intent where needed as discussions proceed

Facilitator – suggestion for Monday sub-group to develop a consultation process for exceptions to SOP, BMP consult, CDP consult, etc. – the meat of the SOP document is timing stips and NSOs – these are not covered elsewhere – there is an opportunity for an additional week of meetings if needed

Landowner – eastern plains landowners will want to be a part of the dialogue – current map shows that eastern plains is a non-consult area but if SOPs are in rule and the only recourse for landowner is to request consult - DOW will see many more consults than they had expected – SOPs place a regulatory burden on landowner – will request a consult as a way to opt-out if that's the only option

Industry – when BLM issues a lease they can include NSOs – but does BLM have NSOs equivalent to what is proposed here regarding wildlife?

BLM – do have NSOs similar to these with regards to wildlife – do consult with DOW on these – once lease granted with stipulations changing the stips on fed lease is very difficult

DOW – goal is not to re-do all existing leases – for expired leases or leases under renewal – if a more restrictive timing stip comes up at this time then would expect it to be incorporated at that time

BLM – we would expect to sit down with DOW at the table to discuss the effect of new stips on the resources

Facilitator – reminder that none of these NSOs can be designed to prohibit the owner reasonable access (this is illegal)

Environmental – DOW needs to advocate on behalf of black footed ferret – they are the most endangered mammal in the country – want to see an SOP for the ferret – we are hearing the issues of industry and local govt but we want to see some protection for ferret

DOW – we negotiated the current ferret reintroduction agreement in NW Colorado with USFWS and local governments – need to live up to this agreement – because without this agreement they would not have been reintroduced

Representative Curry – the intent of this legislation was not to tell the landowner what we want them to do with regards to mule deer or grouse – rather we want to get their consent in permits

DOW – agree that this is what we are trying to do

Facilitator – legislation says DOW will implement whenever reasonably practicable best management practices and other reasonable measures to conserve wildlife

resources...establish standards for minimizing adverse impacts to wildlife
resources...HB 1298 subparagraphs 3c and 3d

Industry - Questions about who gets to trigger consult – if landowner doesn't agree then consult or if industry doesn't agree then consult?

Facilitator – not sure at this time – still under discussion

Landowner – envisioned that the landowner would be able to opt-in to a consult with the DOW rather than have to opt-out

Industry – wetland definition proposal:

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

DOW – suggest replacing the language under the NSO heading for the 3 aquatic-related bullets with: *Areas within 300 feet of the ordinary high water mark of any watercourse, lake bed, sinkhole, ephemeral pool, playa lake, or wetland*

Representative Curry – suggests we talk to Representative Dan Gibbs and possibly listen to transcripts to determine what is meant in 1298 language (3b) where it states Commission consultation AND consent of affected surface owner

Facilitator – clarification - form 34 will be a part of the permit

Industry – then form 34 is a permit specific condition - if form 34 is attached to APD it will be permit specific (if BMP or SOP is included in form 34 all will be permit specific)?

Facilitator – will talk to Representative Gibbs and listen to transcript tapes to wrestle with the legislative intent on this issue - BMPs are not mandated and surface owners have the ability to veto all of them – suggest that the question for next Monday be the BMPs industry can't live with – will need industry to go through BMPs between now and Monday and re-write an alternate for those that are unacceptable

BLM – want to confirm what the federal rights are – make sure they are retaining their rights – preemption issue? Want veto rights for SOPs – not that they would veto but want their rights to be addressed

Facilitator – rules will go through cost benefit /economic analysis during hearing process for all SOPs recommended – week long rulemaking scheduled for late June

Industry – questioning a rulemaking that has this much variance/exception written into it?

DOW – let us know what your issues are with the SOPs and we will take them back and review them

Industry – concern about language that says no development activity – needs to be very specifically defined as to what this activity is

Environmental – need to make sure that the standard for minimizing impacts is achieved in this process – in negotiation in the past wildlife has lost

OGCC – feel the process group is very close to consensus on GAP plans – first one being Piceance

Industry – wants an alternative to form 34 that would include a CDP – plan to roll out an alternate proposal for the process group next week and will be available for this group as well

Industry – does not believe the GAP will be useful – does not agree that White River model is a suitable model for the GAP – not our group’s takeaway from this morning process group discussion about GAP

Facilitator – MEETING SUMMARY

- 1) Industry will bring back counter proposal on SOPs, BMPs and consultation (industry group may need to re-convene based on today’s discussions)
- 2) Break out next Monday (2/11/08) – to discuss consultation process and dive into BMPs and get industry feedback
- 3) Facilitator will address the landowner veto issue/legislative intent – will look into this issue before Monday

Local govt – question when local govt will be inserted into process as well

Facilitator – local govt input process will not be on wildlife issues – other groups (specifically process group) will be discussing where local govt input will be considered – will bring this up at the facilitator debrief for process group to consider