

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

IN THE MATTER OF CHANGES TO THE)	CAUSE NO. 1R
RULES AND REGULATIONS OF THE OIL)	
& GAS CONSERVATION COMMISSION)	DOCKET NO. 200600155
OF THE STATE OF COLORADO)	
)	TYPE: RULEMAKING

**AFFILIATED LOCAL GOVERNMENT COALITION’S and GUNNISON COUNTY’S
PRE-HEARING STATEMENT**

Boulder County, the City of Lafayette, the City and County of Broomfield, the Town of Erie, the City of Fort Collins, the City of Longmont and the Northwest Colorado Council of Governments by and through its Water Quality/Quantity Committee (NWCCOG/QQ), participating as the Affiliated Local Government Coalition (the “ALGC”), together with Gunnison County, a separate party, by the undersigned, submits their Pre-Hearing Statement on the 800, 900, and 1200 Series Rules for the above-captioned proceeding (“Mission Change Rulemaking.”)

I. ALGC POSITION STATEMENT

A. 800 Series

The ALGC and Gunnison County agree with and support the prehearing statement and proposed redlines regarding the 800 Series rules submitted by the City of Aurora.

In addition to the changes suggested by Aurora, we recommend that the affected local government(s) be part of the coordination for aquifer exemptions in Rule 802.a. A critical question in those exemptions is whether an aquifer may ever provide water for surface uses, and the local government(s) with jurisdiction over the area in which the aquifer lies are a primary source for that information. We provide that limited, additional redline in the attached redline changes.

B. 900 Series

Pollution prevention is a paramount concern for the ALGC and Gunnison County, as well as a paramount focus of the COGCC's new mission under S.B. 19-181. The rules must supply strong protections to public health, safety, and welfare and the environment and wildlife resources. To that end, the ALGC agrees with and supports the comments on the 900 Series submitted by the Environmental Defense Fund, along with that group's redline proposals. We also support the statement filed by the Rocky Mountain Low-Level Radioactive Waste Compact on the 900 Series.

C. 1200 Series

1. Support for numerous positions of La Plata and San Miguel Counties

The ALGC agrees with and supports the comments and redlines to the 1200 Series submitted by La Plata and San Miguel Counties. In particular, we agree that:

- a. Impacts to High Priority Habitat ("HPH") must be considered even if the operation is located outside HPH;
- b. the rules should require existing facilities perform improvements to protect or mitigate impacts that adversely affect wildlife and biological resources;
- c. the list of HPH sent by CPW to COGCC on January 6, 2020 is more comprehensive than current Rule 1202.c(1) and should be adopted;
- d. the Rules should incorporate CPW's State Wildlife Action Plan, Colorado Natural Heritage Program databases, and the CODEX platform for wildlife protection and observation into HPH;
- e. species identified as sensitive for both animals and plants should be included in the wildlife and biological resources addressed by the Rules;
- f. protection plans for biological resources should be required;
- g. the Rules should create a mechanism to convene intergovernmental discussions that identify overlapping federal, state and local environmental protection standards, and resolve wildlife and land use conflicts at the beginning of the process in a robust pre-application discussion;

- h. Rule 1202.a(6) should explicitly require that Operators meet all local government requirements for reclamation; and
- i. the Commission, not the Director, should make certain decisions in Rules 309, and 1203.

Other points made by La Plata and San Miguel Counties also align with the following specific comments.

2. *Rule 309*

Rule 309.e.(1) states that the purpose of consultation with CPW is to determine “*whether conditions of approval* are necessary to avoid, minimize, or mitigate adverse impacts to wildlife resources associated with HPH, and protect against adverse impacts to wildlife resources resulting from Oil and Gas Operations” (emphasis added). This statement ignores that the primary directive is to “protect” wildlife, and that not just conditions of approval, but denial of a particular oil and gas location, may be necessary to protect wildlife resources. The 1200 Series needs to clearly establish COGCC’s independent duty to review oil and gas development applications and approve only those that protect wildlife resources from adverse impacts.

In situations where a consultation must occur, the Surface Owner and the Relevant and Proximate Local Governments should be included in the consultation process. These entities should also be included in determining when CPW consultation is not required. Consultation should occur early in the permitting process, prior to a formal permit application being submitted at the local and state levels, for a number of reasons. First, local agencies invest time, resources, and taxpayer dollars to purchase and manage land for public use and conservation. Often these public lands are located outside of HPH yet support habitat connectivity, recreation values and a mosaic of ecological functions important to constituents and local conservation goals. The interplay between local and state conservation and protection values must be reconciled early to

ensure necessary requirements are understood for the completion of any meaningful impact assessments. Second, local jurisdictions may have more stringent environmental standards than the state and federal governments. Robust interagency coordination is required to ensure all regulations are adhered to. Finally, including Surface Owners in the consultation process is important not just from a property rights perspective, but from a land conservation and resource protection perspective as well. Surface Owners know available resources on their properties best. Additionally, conserved lands owned by local governments are often located outside jurisdictional boundaries to protect areas of regional importance. Without input from Surface Owners and local governments the consultation process could jeopardize negotiations that adequately protect, avoid and mitigate impacts to the environment and wildlife resources.

Moreover, if CPW chooses to waive the consultation, the Relevant and Proximate Local Governments should have authority to review the waiver and to require CPW to hold the consultation where they find it necessary. A decision not to engage in consultation does not remove the responsibility of an applicant to comply with all local government regulations and approvals

One-time increases of up to 1 acre should still trigger a consultation (e.g., be eliminated from the list of situations where a consultation is not required in 309.e(3)D). The size of an expansion is not the critical issue; rather, it is the nature of the affected land as wildlife habitat. If sensitive areas are affected, all stakeholders should have the opportunity to consult.

For Conditions of Approval, we would like further information on what criteria the Director or Commission will use to review the CPW recommendations. Furthermore, the CPW recommendations should be presented to the Commission even if the Director does not support them, and the CPW recommendations should not be edited by the Director in any way. Further,

even if the Surface Owner does not agree with including in the Director's Recommendation the conditions of approval to avoid, minimize, or mitigate adverse impacts to wildlife resources, they should still be presented to the Commission with information explaining why the Surface Owner does not agree with the recommendation(s).

Well maintenance and repair activities that are significant and on existing Oil and Gas Locations should be included in the list of instances that require consultation listed in Rule 309.e(2).

The Relevant and Proximate Local Governments must be included in notice provisions.

3. Rule 1201 – Wildlife Plans

Both Wildlife Protection Plans and Wildlife Mitigation Plans should require initial and ongoing consultation with CPW and local governments. Wildlife Protection Plans are designed with fewer requirements than Wildlife Mitigation Plans simply because they cover development outside HPH, but the impacts to wildlife from such development is still a critical concern. The consultation may be brief in cases where wildlife is not threatened, but it must be had to ensure that is the case.

4. Rule 1202 – Operating Requirements

In addition to perennial streams, wetlands should be added to the places where operators must bore rather than trench flowline and utility crossings.

In Rule 1202.a(6), Relevant Local Governments must have approval authority over the re-vegetating seed mixes used in their jurisdictions.

Regarding the list of HPH in Rule 1202.c(1), we generally agree with La Plata and San Miguel Counties' suggestion that CPW's most comprehensive list should be used for the definition of HPH. In addition, if necessary, Burrowing Owls (within 650 feet of an active nest)

need to be added, the buffer distance for Bald Eagles should be increased to one-half mile, and lands designated for wildlife protections by local governments should be added.

Rule 1202.c.(2)A.i. should expand those activities to which the rule applies to include those that utilize large, noisy equipment other than drilling or workover rigs.

In addition to CPW, the Relevant and any Proximate Local Government should be consulted in the context of non-emergency workovers.

The list essentially re-defining High Priority Habitat in Rule 1202.d should be eliminated. The two different lists create confusion, and so long as HPH is properly defined in 1202.c(1), the single definition should govern. Moreover, development at increased densities should be evaluated with respect to the most comprehensive listing of sensitive areas.

5. *Rule 1203 – Compensatory Mitigation for Wildlife Resources*

In addition to CPW, the Director should consult with the Relevant and any Proximate Local Government about the adequacy of the proposed Compensatory Mitigation Plan and any local wildlife mitigation requirements. This consultation should occur before the COGCC approves any Compensatory Mitigation Plan.

The Compensatory Mitigation Plan should include the operator's proposed best management practices for COGCC's and CPW's review and either approval or modification.

The Direct Impact Habitat Mitigation Fee should represent the cost to replace the habitat disturbed per acre. A single fee for disturbances ranging from 1 to 11 acres is inappropriate where premium habitat may have a fair market value of \$10,000 or more per acre. The per-acre fee should be determined based on recent appraisals of similar property in the region with an adjustment for the habitat (as opposed to market) value of the lands. If no such appraisal information can be found, the operator should be required to obtain data for CPW's review.

II. WITNESS LIST

Per the Amended Case Management Order, the ALGC and Gunnison County will identify witnesses as necessary in its Prehearing Response Statement.

III. EXHIBIT LIST

Per the Amended Case Management Order, the ALGC and Gunnison County will identify exhibits as necessary in its Prehearing Response Statement.

IV. OPEN LEGAL ISSUES

The ALGC and Gunnison County are not aware of any open legal issues for consideration at the hearings in this matter, other than the various parties' disputed positions on particular rules.

V. RELIEF REQUESTED

The ALGC and Gunnison County request that the Commission adopt staff's draft 800, 900, and 1200 Series Rules with the modifications suggested by the ALGC and Gunnison County.

VI. TIME REQUESTED FOR PRESENTATION

To the extent necessary, the ALGC and Gunnison County request an hour total for their combined presentation of witnesses and argument for the 800, 900, and 1200 Series Rulemaking.


RESPECTFULLY SUBMITTED this 19th day of August, 2020.

BOULDER COUNTY, COLORADO

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **AFFILIATED LOCAL GOVERNMENT COALITION’S and GUNNISON COUNTY’S PRE-HEARING STATEMENT** was served electronically, this 19th day of August, 2020, to the following:

DNR_COGCC.Rulemaking@state.co.us

/s/Stephanie Adamson
Stephanie Adamson, Legal Assistant

800 SERIES
UNDERGROUND INJECTION FOR DISPOSAL AND ENHANCED RECOVERY PROJECTS

801. UIC AQUIFER EXEMPTIONS.

- a. Criteria for UIC Aquifer exemption.** An UIC Aquifer or a portion thereof may be designated by the Director or the Commission as an exempted UIC Aquifer, in connection with the filing of an application pursuant to Rules 803, 808, 809 or 810, and after coordination with **any local government with jurisdiction over the area of the aquifer**, the Colorado Department of Public Health and Environment, Water Quality Control Division and U.S. Environmental Protection Agency, if it meets all of the following criteria:

**PERMITTING PROCESS
300 SERIES**

309. CONSULTATION

e. Colorado Parks and Wildlife.

- (1) **The Purpose of Consultation.** The purpose of consultation with Colorado Parks and Wildlife (CPW) is to ~~provide the Director the information necessary to determine whether conditions of approval are necessary to avoid~~ assist the agencies in protecting, minimize, or mitigate adverse impacts to wildlife resources associated with High Priority Habitats, and protect against adverse impacts to wildlife resources resulting from Oil and Gas Operations. Factors that CPW may take into consideration during consultation include, but are not limited to, the following:
- A. Anticipated direct and indirect effects of the proposed Oil and Gas Operations on wildlife resources;
 - B. The extent to which the proposed siting of facilities avoids or minimizes impacts
 - C. The extent to which the proposed Oil and Gas Operations incorporate the use of existing facilities, roads, and pipeline corridors and limit new surface disturbance and habitat fragmentation;
 - D. The extent to which the proposed Oil and Gas Operations use technology and Best Management Practices which are protective of wildlife resources, including but not limited to seasonal construction and drilling limitations, noise limitations, remote operations, equipment disinfection, and transporting and storing liquids through pipelines and large tanks or other measures to reduce traffic volumes; and
 - E. The extent to which the proposed Oil and Gas Operations are within land used or designated to be used for residential, industrial, commercial, agricultural, or other purposes, and the existing wildlife disturbance associated with such use.
- (2) **When Consultation Must Occur.** The Operator will consult with the Surface Owner (unless the Surface Owner has waived their right to participate pursuant to 309.e.(3).C), ~~Relevant Local Government, Proximate Local Government, other relevant land management agencies~~ and with CPW about a Form 2A, Oil and Gas Location Assessment, Oil and Gas Development Plan, Comprehensive Area Plan, or other matter where:
- A. A proposed Oil and Gas Location or associated new access road, utility, or pipeline corridor, ~~or significant work on an existing Oil and Gas Location,~~ falls within ~~2000 feet of~~ a High Priority Habitat, a State Park, or a State Wildlife Area.
 - B. A proposed Oil and Gas Location or associated new access road, utility, or pipeline corridor, ~~or significant work on an existing Oil and Gas Location,~~ falls within ~~2000 feet of~~ a federally designated Critical Habitat for a Threatened or Endangered species.

- C. A proposed Oil and Gas location or associated new access road, utility or pipeline corridor, or significant work on an existing Oil and Gas Location, falls within 2000 feet of lands conserved or protected by a local government.
 - D. A proposed Oil and Gas Location or associated new access road, utility, or pipeline corridor, or significant work on an existing Oil and Gas Location, falls within an existing conservation easement established wholly or partly for wildlife habitat.
 - E. CPW requests consultation or because consultation is necessary to avoid, minimize, or mitigate reasonably foreseeable direct, indirect, or cumulative adverse impacts to wildlife resources from a Form 2A, Oil and Gas Location Assessment, Oil and Gas Development Plan, Comprehensive Area Plan, or other matter where consultation is not otherwise required.
 - F. The Operator seeks a variance from a provision in the Commission's 1200 Series Rules, or from wildlife-specific conditions of approval or Best Management Practices approved on a Form 2A, Oil and Gas Location Assessment.
 - G. The Director determines that consultation would assist the Director in determining whether to recommend approving or denying an Oil and Gas Development Plan or Comprehensive Area Plan.
 - H. Notwithstanding the foregoing, the requirement to consult with CPW may be waived by CPW at any time. Any waiver will be based on a jointly written finding by CPW, the Relevant Local Government, Proximate Local Government, Surface Owner and other relevant land management agencies that consultation is not necessary to protect wildlife resources from quantifiable adverse direct, indirect, or cumulative impacts from Oil and Gas Operations.
- (3) **When Consultation is Not Required.** Consultation will not be required if:
- A. The Director has previously approved a Form 2A, Oil and Gas Location Assessment or Comprehensive Area Plan and associated Wildlife Protection Plan or Wildlife Mitigation Plan that addresses the proposed new Oil and Gas Location and the proposed operations are in compliance with previously approved plans.
 - B. CPW has previously approved, in writing, a Wildlife Protection Plan, Wildlife Mitigation Plan, or other conservation plan that remains in effect for the area that includes the proposed new Oil and Gas Location and the proposed operations are in compliance with such plan.
 - C. ~~The Operator demonstrates and~~ CPW, the Surface Owner, Relevant Local Government, Proximate Local Government, and other relevant land management agencies agree in writing that:
 - i. The identified habitat and/or species triggering the consultation is no longer present and unlikely to return to the area; and
 - ii. The proposed Oil and Gas Location is within an area either primarily or completely developed for residential, agricultural, commercial, or industrial use that makes the area incompatible with wildlife habitat.

- ~~D. The proposed new Oil and Gas Location would involve a one time increase in surface disturbance of 1 acre or less contiguous with an existing Oil and Gas Location with a Wildlife Mitigation Plan or other conservation plan that remains in effect for the area.~~
- E. A Commission Order limits the density of Oil and Gas Locations within a Drilling and Spacing Unit to 1 per section, and the Order includes a Wildlife Mitigation Plan or other conservation plan that remains in effect for the area.

(4) Procedures for Consultation.

- A. The Operator will provide:
 - i. The Oil and Gas Development Plan or Comprehensive Area Plan, if applicable, or for consultations that do not involve an Oil and Gas Development Plan or Comprehensive Area Plan, a description of the proposed Oil and Gas Operations, including their location and the phasing and duration of operations consistent with Rules 303 and 304, and, if applicable Rule 314; and
 - ii. Any other relevant available information about the proposed Oil and Gas Operations and the affected wildlife resources, including the Wildlife Habitat Drawing pursuant to Rule 304.b.(7).C and information required by Rule 1201.
- B. The Operator, the Director, the Surface Owner, ~~and CPW, the Relevant Local Government, Proximate Local Government and other relevant land management agencies will conduct a mandatory joint pre-application meeting to discuss existing resources, applicable natural resource protection regulations (local, state and federal), and measures to protect and avoid, mitigate and minimize adverse impacts to wildlife resources. The consultation will occur within 60 days from conduct the consultation required by this Rule 309.e. The time period for consultation will begin concurrent with~~ the start of the public comment period on an Oil and Gas Development Plan or Comprehensive Area Plan pursuant to Rule 303.d.(1).A. If the Operator has made no reasonable accommodation for consultation within such 60-day period, the Director will have discretion to postpone making a decision about an Oil and Gas Development Plan or Comprehensive Area Plan in order to allow consultation to occur ~~if the Director believes the information from consultation is necessary to determine how to protect and avoid, mitigate, and minimize adverse impacts to wildlife resources.~~
- C. The Surface Owner may waive its right to participate in the consultation and is not obligated to provide access to its surface for such consultation. If access to the surface is not granted, the Operator will arrange a consultation meeting with CPW, ~~Relevant Local Government, Proximate Local Government and other relevant land management agencies~~ at a mutually agreeable time and location and the consultation will be based on best available data.

(5) Result of Consultation.

- A. As a result of consultation required by this Rule 309.e, CPW may make written recommendations to the Director about conditions of approval that are necessary and reasonable to avoid, minimize, or mitigate direct, indirect, and

cumulative adverse impacts to wildlife resources from Oil and Gas Operations as set forth in Rules 1202 and 1203.

- B. CPW may also recommend that the Commission deny an Oil and Gas Development Plan, Wildlife Protection Plan, Wildlife Mitigation Plan, Compensatory Mitigation Plan or Comprehensive Area Plan due to reasonably foreseeable risks to wildlife resources that cannot be avoided, minimized, or mitigated to the extent necessary to protect these resources from Oil and Gas Operations.
- C. Where applicable, CPW may also make written recommendations on whether a variance request should be granted, under what conditions, and the reasons for any such recommendations.
- D. CPW may also waive, in writing, any operating or mitigation requirements otherwise required by Rules 1202 or 1203 based on CPW's analysis of potential unavoidable adverse impacts.

(6) Conditions of Approval.

- A. If the Director agrees that the conditions of approval recommended by CPW are necessary and reasonable to avoid, minimize, or mitigate adverse impacts to wildlife resources, the Director will incorporate CPW's recommended conditions into the Director's Recommendation on an Oil and Gas Development Plan or Comprehensive Area Plan.
- B. The Director will not incorporate conditions of approval to avoid, minimize, or mitigate adverse impacts to wildlife resources into the Director's Recommendation without consent of the affected Surface Owner. This provision does not apply to conditions of approval to avoid, minimize, or mitigate impacts to wildlife resources that do not directly impact the affected Surface Owner's property or use of that property including, but not limited to, off-site compensatory mitigation requirements.
- C. If the Director determines that any conditions of approval recommended by CPW are not necessary to avoid, minimize, or mitigate adverse impacts to wildlife resources, the Director will explain **CPW's recommended conditions** and the grounds for the disagreement in the Director's Recommendation **submitted under the procedures described in Rule 306 or 314.**
- D. The Commission will determine whether to follow CPW's recommendation when making a final decision to approve or deny an Oil and Gas Development Plan or Comprehensive Area Plan.

(7) Notification of Decision to Consulting Agency. Pursuant to Rule 306.c.(6), if consultation occurred under this Rule 309.e, the Director will provide the Director's Recommendation to CPW, **the Relevant and Proximate Local Governments, and the Surface Owner** on the same day that it announces the decision. **CPW and other Affected Persons** may petition the Director's Recommendation before the Commission pursuant to Rule 507.c.

PROTECTION OF WILDLIFE RESOURCES

1200 SERIES

1201. WILDLIFE PLANS

- a. **Wildlife Protection Plan.** Proposed Oil and Gas Operations on new or amended Oil and Gas Locations ~~outside of High Priority Habitat~~ require a Wildlife Protection Plan that includes a description of the Rule 1202.a operating requirements applicable to the Oil and Gas Location. Wildlife Protection Plans may address multiple Oil and Gas Locations if supplemental site-specific information is provided as needed to meet Rule 1202.a operating requirements at each Oil and Gas Location. Wildlife Protection Plans ~~do not~~ require ~~Colorado Parks and Wildlife (CPW)~~ consultation ~~and/or~~ approval ~~from Colorado Parks and Wildlife (CPW), the Relevant Local Government and any Proximate Local Government.~~
- b. **Wildlife Mitigation Plan.** Proposed Oil and Gas Operations on new or amended Oil and Gas Locations within High Priority Habitat require a Wildlife Mitigation Plan that includes a description of the Rule 1202.a operating requirements, and the additional operating and mitigation requirements in Rules 1201.b.(1)–(4), 1202, and 1203. Wildlife Mitigation Plans may address one or multiple Oil and Gas Locations. Pre-existing CPW-approved Wildlife Mitigation Plans in effect [on November 2, 2020] may meet these requirements subject to written concurrence from CPW that the Wildlife Mitigation Plan satisfies the requirements of this Rule 1201.b.
- (1) A description of ~~a the joint mandatory~~ny pre-application ~~consultation with CPW, meeting~~ which may include an Alternative Location Analysis pursuant to Rule 304.b.(2).A.iv, or identifying site-specific measures to avoid, minimize, or mitigate adverse impacts to wildlife resources;
 - (2) A description of Best Management Practices incorporated into the proposed Oil and Gas Operations that the Operator commits to implementing for the purposes of minimizing impacts to wildlife;
 - (3) A description of the Rule 1202.b operating requirements applicable to the Oil and Gas Location; and
 - (4) A description of the Rule 1203 mitigation commitments to offset unavoidable adverse impacts to wildlife resources.

1202. OPERATING REQUIREMENTS.

a. The operating requirements identified below apply statewide unless the Operator obtains a signed waiver from Colorado Parks and Wildlife (CPW) and following approval of a Form 4, Sundry Notice or Form 2A, Oil and Gas Location Assessment documenting the relief.

...

(6) When conducting interim and final reclamation under Rules 1003 and 1004, Operators will use CPW-recommended seed mixes for reclamation when consistent with the Surface Owner's ~~and Relevant Local Government's~~ approval and any local soil conservation district requirements.

b. The operating requirements identified below apply to all Oil and Gas Operations in

~~High Priority Habitats~~ unless the Operator obtains a signed waiver from CPW and following approval of a Form 4, Sundry Notice or Form 2A, Oil and Gas Location Assessment documenting the relief.

- (1) Operators will bore, rather than trench, flowline and utility crossings of perennial streams ~~and wetlands identified as aquatic High Priority Habitat~~. When installing culverts or bridges, such structures will not impact or prevent the passage of fish unless otherwise directed by CPW.
 - (2) Operators will treat Drilling Pits, Production Pits, and any other Pit associated with Oil and Gas Operations 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.
- c. Except as specified in Rule 1202.c.(2), below, Operators will not conduct any new ground disturbance and well work, including access road and pad construction, drilling and completion activities, and flowline/utility corridor clearing and installation activities in the High Priority Habitats listed in Rule 1202.c.(1).
- (1) High Priority Habitats subject to this Rule 1202.c include:
 - A. Columbian sharp-tailed grouse (within 0.6 miles of the lek site);
 - B. Greater prairie chicken (within 0.6 miles of the lek site);
 - C. Greater sage-grouse (within 1.0 miles of the lek site);
 - D. Gunnison sage-grouse (within 0.6 miles of the lek site);
 - E. ~~Burrowing owl (within 650 feet of an active nest);~~
 - F. Lesser prairie chicken (within 1.25 miles of the lek site);
 - G. Plains sharp-tailed grouse (within 0.4 miles of the lek site);
 - H. Bald eagle (within 0.5025 miles of an active nest);
 - I. Ferruginous hawk (within 0.5 miles of an active nest);
 - J. Golden eagle (within 0.25 miles of an active nest);
 - K. Northern goshawk (within 0.5 miles of an active nest);
 - L. Peregrine falcon (within 0.5 miles of an active nest);
 - M. Prairie falcon (within 0.5 miles of an active nest);
 - N. Swainson's hawk (within 0.25 miles of an active nest);
 - O. Least tern production area;
 - P. Piping plover production area;
 - Q. Townsend's big-eared bat, Mexican free-tailed bat, and myotis (within 350 feet of winter hibernacula);

- R. Cutthroat Trout Designated Crucial Habitat (within 300 feet of OHWM);
- S. Native Aquatic Species Conservation Waters (within 300 feet of OHWM);
- T. Sportfish Management Waters (within 300 feet of OHWM);
- U. Local government wildlife protection areas;
- V. wildlife protection areas identified on the Colorado Conservation Data Explorer (CODEX); and
- W. State Wildlife Areas and State Parks.

(2) This Rule 1202.c does not apply to:

- A. Production operations at existing Oil and Gas Locations, including:
 - i. Routine maintenance, repairs and replacements of surface equipment that do not require a drilling or workover rig or other heavy equipment;
 - ii. Emergency operations;
 - iii. Spill and Release response;
 - iv. Ongoing reclamation and site maintenance activities; or
 - v. Habitat improvements that have been approved by CPW or the Commission to offset adverse impacts at existing facilities.
- B. Non-emergency workovers, including uphole recompletions, plugging operations, and site investigation and remediation at existing Oil and Gas Locations, if:
 - i. The Operator has obtained prior approval from the Director;
 - ii. The Operator has consulted with CPW, the Surface Owner, Local Government and any Proximate Local Government; and
 - iii. The Operator provides a plan demonstrating that it will avoid and minimizes adverse impacts to the species for which the High Priority Habitat exists-wildlife resources.

~~d.~~ All Oil and Gas Development Plans submitted after [November 2, 2020], including amendments to previously-approved Form 2As, Oil and Gas Location Assessments that cause the density of Oil and Gas Locations to exceed 1 per square mile inside or within 2000 feet of the High Priority Habitats listed in Rule 1202.d require a CPW-approved Wildlife Mitigation Protection Plan pursuant to Rule 1201.b or other CPW-approved conservation plan. This Rule 1202.d applies to the following High Priority Habitat types:

- ~~(1) Bighorn-sheep migration corridors, production areas, and winter range;~~
- ~~(2) Elk migration corridors, production areas, severe winter range, and winter concentration areas;~~

~~(3) Mule deer migration corridors, severe winter range, and winter concentration areas;~~

~~(4) Pronghorn migration corridors and winter concentration areas;~~

~~(5) Greater sage-grouse priority habitat management areas;~~

~~(6) Columbian sharp-tailed grouse production areas;~~

~~(7) Greater prairie chicken production areas;~~

~~(8) Gunnison sage-grouse occupied habitat and production areas;~~

~~(9) Lesser prairie chicken focal areas; and~~

~~(10) Plains sharp-tailed grouse production areas.~~

1203. COMPENSATORY MITIGATION FOR WILDLIFE RESOURCES

- a. In High Priority Habitats listed in Rule 1202.c(1)d, the Operator will complete compensatory mitigation to offset direct and unavoidable adverse indirect impacts as specified in Rules 1203.b–d. Direct impacts to wildlife ~~are unavoidable and~~ occur from direct mortality or displacement during construction activities and habitat conversion to industrial facilities. Indirect impacts to wildlife occur from the cumulative functional habitat loss from fragmentation and modified habitat use as development density increases. Indirect impacts may be avoided or minimized through the application of alternative siting and Rule 1202 operating requirements. The Director, after consultation with Colorado Parks and Wildlife (CPW), ~~the Relevant Local Government, Proximate Local Government and Surface Owner~~ will have discretion to determine whether compensatory mitigation proposed by the Operator is sufficient to protect wildlife from direct and unavoidable adverse indirect impacts. An Operator may comply with the obligation to complete compensatory mitigation by:

- (1) Completing or causing to be completed a project approved by CPW and the Director as described in a Compensatory Mitigation Plan pursuant to Rule 1203.b; or
 - (2) Paying a habitat mitigation fee to CPW, as provided by Rules 1203.c and 1203.d. Any fee per Rule 1203.c and 1203.d will be calculated to reimburse all reasonable and necessary direct and indirect costs that will be incurred by CPW in completing compensatory mitigation sufficient to offset the direct and unavoidable adverse indirect impacts to wildlife resources caused by the proposed Oil and Gas Operations.
 - (3) The Director may grant an exception from the compensatory mitigation requirement set forth in this Rule 1203 after consulting with CPW pursuant to Rule 309.e.(5).
- b. If an Operator chooses to complete or cause to be completed compensatory mitigation to offset the direct and unavoidable adverse indirect impacts to wildlife resources:
- (1) The Operator will submit a Compensatory Mitigation Plan with a level of detail commensurate with the scale and scope of the impacts to the Director that includes, as appropriate:

- A. Plan objectives or mitigation goal;
- B. Coordination and concurrence with CPW;
- C. Site selection;
- D. Site protection instrument;
- E. Valuation determination;
- F. Baseline information;
- G. Mitigation schedule and workplan;
- H. Maintenance plan;
- I. Performance standards;
- J. **Proposed best management practices;**
- K. Monitoring requirements;
- L. Long-term management plan;
- M. Adaptive management plan, if necessary;
- N. Financial assurances; and
- O. Other information as required by the Director

(2) The Director will consult with CPW about the adequacy of the proposed Compensatory Mitigation Plan.

(3) The Director may accept the Operator's Compensatory Mitigation Plan if it meets the criteria of Rule 1203.b.(1) and, in the Director's judgment, provides adequate compensation for direct and unavoidable adverse indirect impacts to wildlife resources from the proposed Oil and Gas Operation. **If the Compensatory Mitigation Plan is not adequate, the Director will advise the Operator of necessary changes or additions and require re-submission.**

c. **Direct Impact Habitat Mitigation Fee.** An Operator may comply with its obligation to mitigate direct impacts to wildlife caused by new ground disturbance within High Priority Habitat types listed in Rule 1202.c(1)d. by paying to CPW a habitat mitigation fee **in the amount listed in Table 1203-4.** The fee will be measured per acre of disturbance and based on an appraisal of the land value conducted within the prior 12 months with any upward adjustment deemed appropriate by CPW in recognition of the biological habitat value of the lands.

Table 1203-4

Direct Impact Habitat Mitigation Fee	
<u>Total Disturbance Acres</u>	<u>Fee</u>
1.0-10.99	\$13,750

11.0+	Determined based on site-specific conditions and consultation with GPW
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