



Surface Owner Consent under COGCC's Amended Rules

House Bill 1298 prohibits the COGCC from attaching permit-specific conditions for wildlife habitat protection without the consent of the surface owner. C.R.S. § 34-60-128(3)(b). It also declares it to be in the public interest to manage oil and gas operations in a manner that balances development with wildlife conservation, and directs the COGCC to administer the Act so as to minimize adverse impacts to wildlife resources affected by oil and gas operations. *Id. at 102(1)(a)(iii) and 128(2), respectively.*

The amended rules strike an effective balance between protecting the interests of surface owners and ensuring that impacts to wildlife are minimized.

Surface Owner Consent after Consultation

When an oil and gas facility is proposed in “sensitive wildlife habitat” or is authorized in a “restricted surface occupancy area,” then a consultation of up to 40 days will occur between the operator, the COGCC, the Division of Wildlife, and the surface owner. Going into this consultation, the operator may propose mitigation for the effected wildlife resource, which may include habitat enhancement, on- or off-site habitat mitigation, or mitigation banking.

As a result of this consultation, the Division of Wildlife may make written recommendations to the COGCC on conditions of approval necessary to minimize adverse impacts to wildlife resources. Where the operator, the COGCC, the Division of Wildlife, and the surface owner agree to wildlife conditions, then they will be incorporated into the permit approval. Where these parties do not agree, the COGCC Director will determine, based on the evidence before the agency, whether such conditions are necessary and whether the surface owner would consent to their imposition. The rules expressly provide that no permit-specific conditions of approval for wildlife habitat protection will be imposed without surface owner consent. *See Rules 306.c.(3).C, 1202.e.*

Where the surface owner withholds consent to permit-specific wildlife habitat conditions, the COGCC will work with the surface owner, the CDOW, and the operator to identify acceptable alternate conditions. In the extremely rare instance where conditions acceptable to the surface owner cannot be identified, the COGCC will decide whether to issue the permit without permit-specific wildlife conditions or to deny the permit. Ultimately, the COGCC has the responsibility under the Act to balance development of oil and gas resources with minimizing adverse impacts to wildlife resources. C.R.S. § 34-60-128(2).

If the Director withholds approval of a permit, the amended rules allow the operator to obtain a prompt hearing before the Commission and to ask for an emergency order rescinding the Director’s decision. *See Rule 503.b.(7).* The Final Rules also allow the Division of Wildlife to seek a hearing on the permit approval in order to raise issues relating to minimizing adverse impacts to wildlife resources. *Id.*

Surface Owner Consent for General Operating Requirements

House Bill 1298 also directs the COGCC to standards for minimizing adverse impacts to wildlife resources and to implement, wherever reasonably practicable, best management practices to conserve wildlife. C.R.S. §§ 24-60-128(3)(c) & (d).

The COGCC's amended rules contain several operating standards for wildlife protection that will apply statewide, many of which are already being implemented by oil and gas companies in Colorado. These include requiring the use of bear-proof containers for food-related trash in black bear habitat, disinfecting certain equipment such as suction hoses and water tanks before using them in designated Cutthroat Trout habitat, planning transportation networks to minimize the number and length of oil and gas roads, establishing refueling and chemical storage areas outside of riparian zones and floodplains, and using the minimum practical construction widths for new rights-of-way where pipelines cross streams, riparian areas, and critical habitats. Other operating standards will only apply in "sensitive wildlife habitat" and "restricted surface occupancy areas," such as constructing escape ramps for certain pipeline trenches during installation, consolidating new facilities, minimizing rig mobilization where practicable, using boring instead of trenching across critical fish streams, and treating certain wastewater pits to prevent the spread of West Nile Virus.

The Commission determined that some of the wildlife-related operating practices applicable to activities in sensitive wildlife areas should be required only with the consent of the surface owner. The rules thus provide that certain requirements, such as using wildlife-appropriate fencing or seed mixes during reclamation, limiting access to oil and gas roads, and using topographic features and vegetative screening to create seclusion areas will only be required where allowed by surface owners.

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