

APPENDIX B

Statement of Basis, Specific Statutory Authority, and Purpose Amendments to Current Rules of the Colorado Oil and Gas Conservation Commission, 2 C.C.R. § 404-1

Cause No. IR Docket No. 230200062 High Priority Habitat Maps Rulemaking

This statement sets forth the basis, specific statutory authority, and purpose for amendments (“High Priority Habitat Maps Rulemaking”) to the Colorado Oil and Gas Conservation Commission (“Commission”) Rules of Practice and Procedure, 2 CCR 404-1 (“Rules”).

Unless otherwise specified, the new rules and amendments become effective twenty days after publication in the Colorado Register, per C.R.S. § 24-4-103(5).

In adopting amendments to the Rules, the Commission relied upon the entire administrative record for this rulemaking proceeding, which formally began on February 28, 2023, when the Commission submitted its Notice of Rulemaking to the Colorado Secretary of State for revisions to its 100 Series definitions. This record includes public comments, written prehearing statements, written prehearing testimony, and oral testimony and comments provided during public hearings and Commission deliberations.

Statutory Authority.

The Commission’s authority to promulgate amendments to the Rules is derived from the following sections of the Colorado Oil and Gas Conservation Act (“Act”), C.R.S. §§ 34-60-101 - 130:

- C.R.S. § 34-60-105(1), (Commission has the power to make and enforce rules);
- C.R.S. § 34-60-106(2.5)(a), (Commission will regulate oil and gas operations in a reasonable manner to protect and minimize adverse impacts to public health, safety, and welfare, the environment, and wildlife resources);
- C.R.S. § 34-60-108, (Commission has authority to adopt rules); and
- C.R.S. § 34-60-128(2), (Commission will minimize adverse impacts to wildlife resources).

Identification of Amended Rules.

Consistent with its statutory authority and its legislative mandates, and in accord with the administrative record, the Commission amended the 100 Series definition of High Priority Habitat.

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Overview of Purpose and Intent.

During the Commission's Senate Bill 19-181 Rulemaking proceedings in 2020, it developed a definition for High Priority Habitat, which focuses on ensuring healthy wildlife populations by deferring to the expertise of Colorado Parks and Wildlife ("CPW") in identifying the species and habitats for which avoiding, minimizing, and mitigating impacts is critical based on the best available science. In adopting this definition, the Commission chose to use High Priority Habitat as the criteria to initiate certain permitting or review processes and substantive standards in its 300, 400, 900, and 1200 Series Rules. High Priority Habitat is an accepted CPW term that provides certainty that there is known geographic distribution of the habitat and species, impacts from development (oil and gas or otherwise) are well understood, and there is consensus on effective measures to protect the resource.

Maps showing and spatial data identifying the individual and combined extents of the High Priority Habitat areas were provided by CPW and attached to the 1200 Series Rules as Appendix VII. As stated in the 100 Series definition of High Priority Habitat, the Commission intended to coordinate with CPW to determine the current and relevant data upon which it will base the High Priority Habitat maps and to periodically update the maps. The extent of the High Priority Habitat is subject to periodic updates, but no more frequent than on an annual basis and will be modified only through the Commission's rulemaking process described in Rule 529. The Commission will notice the rulemaking proceeding by January 15 of each year with the intent of updating the maps and spatial data annually.

Amendments and Additions to Rules.

100 Series Definition of High Priority Habitat.

- The High Priority Habitat maps set forth in Appendix VII are amended to reflect the current understanding of wildlife habitat use in Colorado for the species identified as High Priority Habitat in its 300, 400, 900, and 1200 Series Rules. These proposed updates are a result of inventories and monitoring to determine the status and extent of the following High Priority Habitat areas: raptor nests and roost sites, grouse and prairie chicken lek sites and occupied ranges, bat hibernacula, migration corridors, production areas, severe winter ranges, winter concentration areas, aquatic, and winter ranges. These updates also reflect changes to any CPW-owned State Wildlife Areas and State Parks within the State of Colorado.

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Effective Date.

The Commission adopted the proposed amendments at its hearing on June 14, 2023, in Cause No. IR, Docket No. 230200062. These amendments will become effective, per C.R.S. § 24-4-103(5), twenty days after publication in the Colorado Register.

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