

COLORADO'S ENERGY FUTURE: *Making Sure Wildlife is Protected*

In October 2020, the Colorado Oil and Gas Conservation Commission (COGCC) – the state board that approves drilling permits and regulates the oil and gas industry - will amend its rules for permitting oil and gas sites in Colorado. ***Your voice is needed to ensure that wildlife protection is prioritized in these amendments.***

This rulemaking is required by [Senate Bill 19-181](#), which Governor Polis signed into law on April 16, 2019. Among other major reforms, SB 181 changed the agency's mission by directing the COGCC to safeguard wildlife and its habitat against the potential negative impacts of oil and gas development and clarifying that the COGCC may deny a permit application if its approval would not protect wildlife, the environment, or public health, safety, or welfare.

Please weigh in on this issue as the COGCC Commissioners need to hear from the public as to the importance of addressing wildlife protection in the COGCC's "Mission Change" rulemaking in October. You can do so by:

- Emailing written comment to COGCC Commissioners at DNR_COGCC.Rulemaking@state.co.us by **Friday, August 14, 2020**. Note that emailed comments must include "800/900/1200 Series Rulemaking" in the subject of the email.
- Helping to elevate this issue by writing letters to the editor and engaging with your social network.
- Delivering oral comments to the COGCC Commissioners at its hearing on Monday, **September 28, 2020**. The COGCC will make an online registration available the week before the hearing.

Background information is below, along with five key requests for wildlife protection. More information on the COGCC's "Mission Change" rulemaking is available [here](https://bit.ly/3iCkgFo) (<https://bit.ly/3iCkgFo>).

Background

SB 181 expands on landmark legislation passed in 2007, [House Bill 07-1298](#), which directed the COGCC to ensure that adverse impacts of oil and gas on wildlife be avoided wherever possible, and that any remaining impacts be minimized and mitigated. That bill brought state wildlife officials into oil and gas permitting decisions for the first time, calling for consultation between Colorado Parks and Wildlife (CPW) and COGCC on oil and gas permitting in sensitive habitat areas. It also directed COGCC to minimize habitat fragmentation, surface disturbance, and adverse impacts to wildlife – but it didn't impose any standards for doing so. The COGCC's "[1200 Series](#)" rules for wildlife protection were adopted in 2008 to implement HB 1298.

While HB 1298 was largely procedural, SB 181 imposes on COGCC a new substantive duty to ensure that adverse impacts to wildlife, wherever possible, are avoided – and that remaining impacts be minimized and mitigated. It also eliminates prior limits on what the COGCC can do to protect wildlife. While wildlife measures must still be reasonable, SB 181 eliminated the requirement that proponents prove them to be cost effective and technically feasible – a standard that was often used to fight effective regulation, even where it was needed most. It also eliminated the requirement that all wildlife conditions be approved by the surface owner; under the new law, surface-owner consent is only required on conditions that "directly impact the affected property or its use." Finally, in directing the COGCC to protect biological resources from adverse impacts, SB 181 expanded the scope of duties from addressing individual species and habitat types to protecting landscapes and ecosystems.

SB 181 should also be viewed alongside Governor Polis's [Executive Order 2019-11](#), which directed the Department of Natural Resources to:

- compile a report on seasonal big-game habitat and migration patterns by April 1;
- keep this information updated and identify data gaps; and
- identify policy, regulatory, and legislative opportunities to ensure ongoing conservation of habitat and migration corridors.

COGCC's Draft Wildlife Rules

Given these significant changes to the law and new focus on wildlife habitat, this is a significant moment for wildlife protection in Colorado.

In June, the COGCC released Draft Rules to amend its 1200 Series as part of its Mission Change rulemaking. Those Draft Rules are a vast improvement over the COGCC's current wildlife rules and will result in better permitting decisions, protection of more species, and long-term protection of habitat.

Specifically, the Draft Rules:

- **Protect High Priority Habitat.** COGCC has proposed to greatly expand the number of species and habitats that operators must avoid, or that trigger consultation with CPW.
- **Require operators to develop plans to protect wildlife.** The Draft Rules would require operators to prepare a Wildlife Protection Plan for all new pads, and to develop a Wildlife Mitigation Plan for new pads in High Priority Habitat.
- **Involve Colorado Parks and Wildlife earlier in the process.** Under current rules, CPW often cannot influence where a pad is placed because they can get involved only after the operator and the surface owner have agreed on a location. The Draft Rules would call for CPW involvement on an Oil and Gas Development Plan, which predates a pad permit, and which also involves consultation with local governments, state health officials, and others.
- **Require compensatory mitigation where impacts cannot be avoided.** The Draft Rules would require operators either to complete compensatory mitigation projects approved by CPW, or to pay a mitigation fee that CPW can use to complete projects on its own if impacts to wildlife cannot be avoided or minimized.

Five things COGCC should do to improve wildlife protection

Several wildlife, hunting, and angling organizations are asking COGCC to adopt five key changes for wildlife protection in its rulemaking this fall to implement SB 181:

1. **Increase protection for certain wildlife species.** While the expanded protections reflected in High Priority Habitat designations are welcome, COGCC should increase protections for certain sensitive species and habitats:
 - a. Expand buffers around Greater sage-grouse leks from 1 mile to 2 miles, around Gunnison sage-grouse leks from 0.6 mile to 1.0 mile, and around active Golden eagle nests from 0.25 mile to 0.5 mile; and
 - b. Add 300-foot buffers around suitable nesting areas for Western yellow-billed cuckoo and known nesting sites for Southwest willow flycatcher.
2. **Enhance riparian-area protections.** COGCC should expand buffers around important riparian areas from 300 feet to 1,320 feet (i.e. 1/4 mile) to protect surface waters and aquatic species from erosion, sedimentation, and potential spills, and to preserve streamside habitat used by birds and mammals. COGCC should also require additional measures to safeguard surface waters when drilling within 1,500 feet of streams (e.g. lining berms, using tanks instead of pits, collecting baseline water quality samples, and keeping spill response equipment on site).
3. **Prohibit pad construction in big game migration corridors.** While the Draft Rules would require operators proposing pads in migration corridors to consult with CPW, the COGCC should prohibit ground disturbance altogether in migration corridors for important big-game species, including bighorn sheep, elk, mule deer, and pronghorn. Because of big game species' fidelity to these routes, there is no evidence that measures to minimize or mitigate impacts are sufficient to protect migration corridors.

4. **Ensure compensatory mitigation benefits wildlife.** The Draft Rules establish a mitigation fee of \$13,750 for direct disturbance of up to 11 acres, but that may not be sufficient for CPW to ensure long-term maintenance and management of mitigation projects to offset the ongoing impacts oil and gas operations have on wildlife.
5. **Protect biological resources.** Notwithstanding the clear directive in SB 181, the COGCC’s Draft Rules fail entirely to address protection of biological resources. The COGCC should involve the Colorado Natural Heritage Program, the state’s experts on rare and imperiled species and habitats, in consultation, and require operators to include Biological Resources Protection Plans in permit applications, detailing how they will protect plant communities, invertebrates, or soil resources from adverse impacts.

By adopting these measures, COGCC can ensure that it is fully implementing SB 181 to protect wildlife resources.

Please lend your voice! There are a variety ways you can weigh in to help ensure Colorado’s oil and gas rules protect its wildlife and its habitat:

- Send written comments by email (DNR_COGCC.Rulemaking@state.co.us) to the COGCC by August 24,
- Encourage others to become engaged, to speak up on behalf of wildlife on this important issue,
- Write a letter to the editor at your local newspaper, highlighting the measures above,
- Register to offer oral comment at the COGCC Commission hearing on September 28.

For more information, contact:

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The following organizations are actively engaged on this issue, recognizing the importance this process has in determining the future for Colorado’s wildlife and our outdoor heritage:

