



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



IN THE MATTER OF CHANGES TO THE
RULES OF PRACTICE AND PROCEDURE OF
THE OIL AND GAS COMMISSION OF THE
STATE OF COLORADO

CAUSE NO: 1R

DOCKET NO: 1307-RM-01

ORIGINAL

RESPONSE TO PREHEARING STATEMENTS

COMES NOW Chevron U.S.A. Inc., and its affiliates Chevron Midcontinent, L.P., and Four Star Oil & Gas Company ("Chevron"), through its attorneys, Poulson, Odell & Peterson, LLC, and, pursuant to the Commission's Amended Notice of Rulemaking Hearing relating to proposed additions and amendments to the 100 Series (Definitions), Appendix VII (Restricted Surface Occupancy Area ("RSO") Maps), and Appendix VIII (Sensitive Wildlife Habitat ("SWH") Maps) of the Rules of Practice and Procedure of the Commission (the "Proposed Rules"), hereby submits its Response to Prehearing Statements.¹

CPW Updates to COGCC Maps: Chevron opposes the suggestion by Trout Unlimited that Colorado Parks and Wildlife ("CPW") should have the unilateral ability to change the COGCC's SWH and RSO maps as CPW updates the datasets underlying the maps. This approach is contrary to the Colorado APA, the Colorado Oil and Gas Conservation Act ("COGCA"), and the case law cited in Chevron's Prehearing Statement. The Commission must be the agency that revises its own maps, and all changes must be accomplished through a duly noticed rulemaking with a public record and an opportunity for comment. As the Commission recognized in its Executive Summary prepared during the stakeholder process,

[T]he RSO maps are "subject to update on a periodic but no more frequent than annual basis and may be modified only through the Commission's rulemaking process, as provided in Rule 529." The SWH maps are "subject to update on a periodic but no more frequent than biennial basis and may be modified only through the Commission's rulemaking procedures, as provided in Rule 529."

(quoting COGCC Rules, 100 Series).

The Commission is the only state agency with jurisdiction over oil and gas activities, and CPW has different statutory objectives than this Commission. C.R.S. § 34-60-105. There is no assurance that the changes CPW makes to its maps will comport with the Commission's regulatory definitions or statutory directives. Finally, Trout Unlimited's proposal would make the maps a constantly "moving target," thereby compromising the regulatory certainty that the oil and gas industry needs to comply and thrive. While Chevron shares Trout Unlimited's desire for accurate and up-to-date maps, the proposed solution contravenes foundational principles of administrative law.

Four Mile Buffer for Greater Sage Grouse ("GRSG") Active Lek Sites: Chevron agrees with those parties that request "on the record" support for a four mile radius around active GRSG lek

¹ The Colorado Petroleum Association joins in and endorses Chevron's Response to Prehearing Statements.

sites. The Commission should require CPW to explain its justification for the proposed radius, independently examine CPW's analysis, consider relevant literature, assess other evidence presented, and then determine whether a smaller radius is appropriate. For example, if a two mile radius captures 90% of GRSG habitat use and a four mile radius captures 92% of such use, then the evidence would not support the additional burden of expanding the consultation area. Regardless, Chevron is primarily concerned that the GRSG map accurately identify *actual habitat* within whatever radius the Commission adopts.

Maps Representing Consultation Buffers: Chevron agrees that the maps should depict the corresponding areas defined in the 100 Series. The maps should not be viewed as generalized CPW consultation buffers because that is not what the definitions say. Moreover, this approach would be inconsistent with the COGCA. See C.R.S. §§ 34-60-102, 103(5.5), 103(15), 106(d), 128 (providing for the protection of "wildlife resources," *i.e.*, the actual species and their habitat). As stated in Chevron's prehearing statement, the proposed GRSG SWH map does not conform to the 100 Series definition because it does not accurately identify the species' habitat. These disconnects between the definitions and the maps can lead to confusion and misuse by the public, NGOs, and other agencies. The BLM, USFWS, CPW, the COGCC and county governments should understand the specific content and purpose of any given map by simply reading the rules. There should be no risk of different agencies interpreting and applying the same maps in different manners.

Species Other than Grouse and Lesser Prairie Chicken: Chevron supports the comments made by parties requesting that CPW provide record support for the map revisions made for those species for which no definitional changes have been proposed. The GRSG, the Gunnison Sage Grouse, and the Lesser Prairie Chicken have, for obvious reasons, been the focus of the stakeholder meetings and party comments in this rulemaking. However, CPW proposes revisions to the SWH and RSO maps for a number of other species. The Commission must require CPW to provide record factual support and an explanation of all map changes, not just the three which have been of primary concern to the stakeholders.

Finally, Chevron is supportive of COGA's proposed amendments to the 100 Series stating that revisions to RSO and SWH boundaries may not affect pre-existing approved wildlife mitigation plans. Chevron appreciates the opportunity to provide the foregoing comments and looks forward to participating in the rulemaking hearing.

Dated: September 6, 2013

By:



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CERTIFICATE OF SERVICE

I, hereby certify that on this 6th day of September, 2013, I delivered via U.S. Mail, one original and 13 true and correct copies of the above and foregoing RESPONSE TO PREHEARING STATEMENTS, addressed to the following:

Robert J. Frick
Hearings Manager
Docket No. 1307-RM-01
Oil and Gas Conservation Commission
1120 Lincoln Street, Suite 801
Denver, CO. 80203

With an electronic copy sent to:
DNR_COGCC.Rulemaking@state.co.us



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



IN THE MATTER OF CHANGES TO THE RULES OF) CAUSE NO. 1R
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THE OIL & GAS CONSERVATION COMMISSION OF)
THE STATE OF COLORADO) DOCKET NO. 1307-RM-01

ORIGINAL

RESPONSE TO PREHEARING STATEMENTS OF THE COLORADO
PETROLEUM ASSOCIATION

The Colorado Petroleum Association (CPA), by and through its undersigned attorneys, respectfully submits the following Response to Prehearing Statements in accordance with the Amended Notice of Rulemaking Hearing dated August 1, 2013 pertaining to additions and amendments to the Rule 100 series (Definitions), Appendix VII (Restricted Surface Occupancy Area maps), and Appendix VIII (Sensitive Wildlife Habitat maps).

The CPA adopts, endorses and joins in the Response to Prehearing Statements proffered by Chevron U.S.A. and its affiliates in the captioned rulemaking. The CPA urges the Commission to adopt the changes suggested therein.

Dated: September 6, 2013.

By: /s/ John Paul Seman Jr.
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Attorney for Colorado Petroleum Association

CERTIFICATE OF SERVICE

I, hereby certify that on this 6th day of September, 2013, I e-mailed one PDF copy and arranged for hand-delivery one original with thirteen (13) true and correct copies of the above and foregoing RESPONSE TO PREHEARING STATEMENTS OF THE COLORADO PETROLEUM ASSOCIATION PERTAINING TO PERTAINING TO ADDITIONS AND AMENDMENTS TO THE RULE 100 SERIES (DEFINITIONS), APPENDIX VII (RESTRICTED SURFACE OCCUPANCY AREA MAPS), AND APPENDIX VIII (SENSITIVE WILDLIFE HABITAT MAPS), addressed to the following:

Robert J. Frick, Hearings Manager
Docket No. 1307-RM-01
Colorado Oil and Gas Conservation Commission
1120 Lincoln Street, Suite 801
Denver, CO 80203
E-Mail: Robert.Frick@state.co.us

With an electronic copy, in portable document format (pdf), sent to:
DNR_COGCC.Rulemaking@state.co.us

/S/ Alexandra Zvereva