

CPW's Role in the New COGCC Rules

*Rocky Mountain EHS Peer Group - Q2 Presentation
April 15, 2021*



- What's new?
- What's stayed the same?
- What's changed?

Agenda

- 1) Review the Goals of this Presentation.
- 2) Background on Brandon & REL map.
- 3) Overlapping Missions.
- 4) Quick Overview of the New 1200 Series Rules.
- 5) SB 19-181 - What has Stayed the Same?
- 6) What is an HPH?
- 7) What's New for Operators in an HPH polygon.
- 8) SB 19-181 - Specific Changes?
- 9) Wildlife Questions to Consider when Planning an OGD in an HPH.
- 10) Components of an WPP & WMP.
- 11) Not Every O&G Location Qualifies for Direct & Indirect Mitigation.
- 12) How an O&G Location Qualifies for Direct & Indirect Mitigation.
- 13) What's CPW Been Up To Since 1/15/21 re: SB 19-181?
- 14) 3 Collaborative Goals Moving Forward.
- 15) Q&As (Submitted & Others).



Where are we headed with this Presentation?



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Goals of this Presentation

- 1) For CPW, Operators & Consultants to continue to collaborate on a site-by-site basis.
- 2) To understand there are common missions we share.
- 3) To understand that CPW is not trying to slow/stop O&G development, but help operators develop efficiencies with the wildlife portions of their OGDs while responsibly protecting sensitive wildlife habitats.



We're building a bridge as we're walking on it, but SB 19-181 has already given us the direction to go.



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Background on Brandon

- Denver Metro Native
- Earned two degrees from Colorado State University (Go Rams!)
 - Bachelor's Degree in Wildlife Biology
 - Master's Degree in Rangeland Ecology
- 15 years as a consulting wildlife biologist
- Almost 5 years with CPW
- Two job titles with CPW
 - NE Region Energy Liaison
 - NE Region Land Use Coordinator

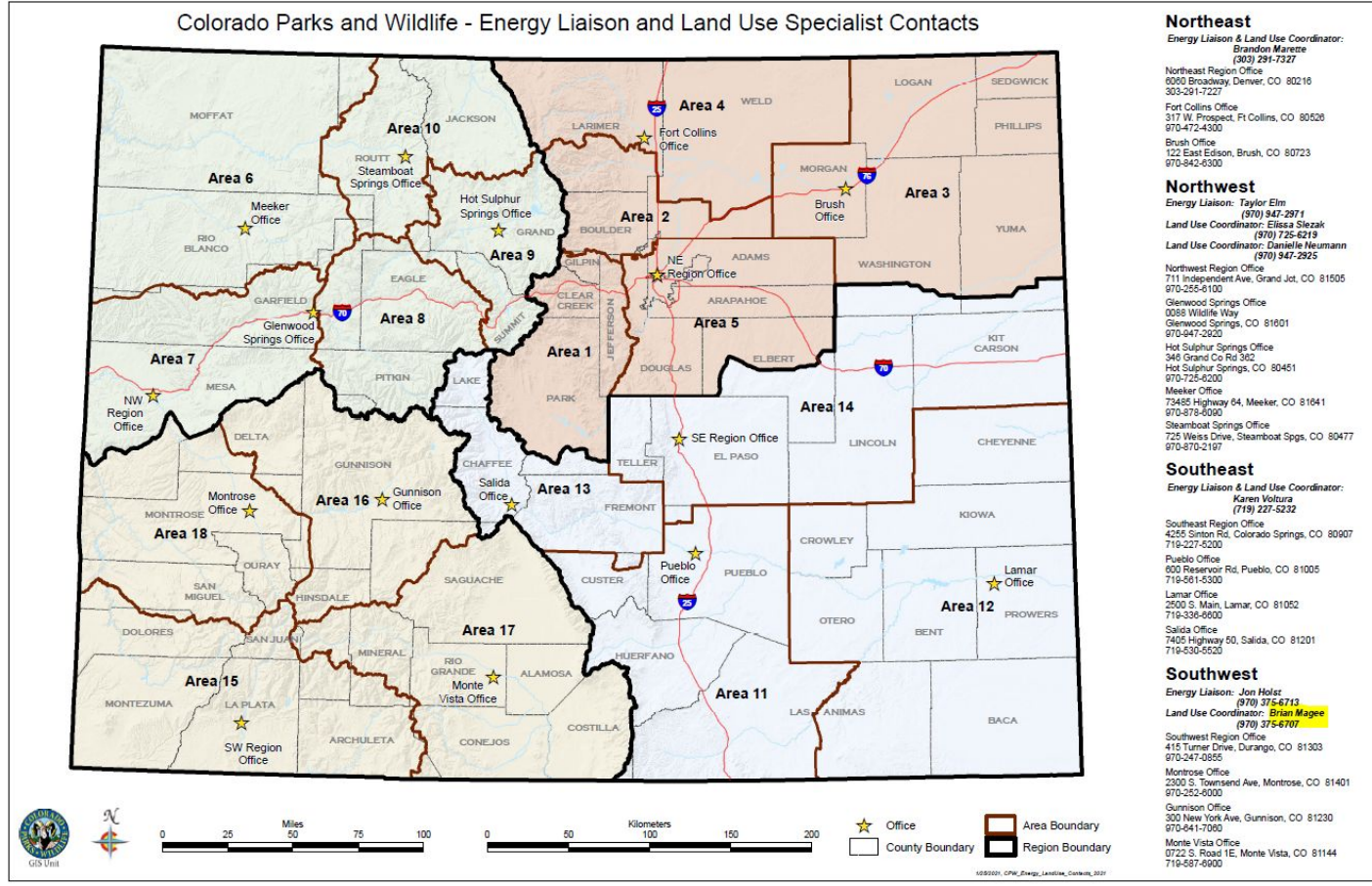


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Regional Energy Liaison & Land Use Coordinator Map

Google “CPW Energy” to get this map and more info.

In CPW’s SW Region, Jon Holst took another job, so please contact Brian Magee with any questions in that region until that position is filled.



Overlapping Missions

While some may want to focus on our differences, I tend to look for similarities.

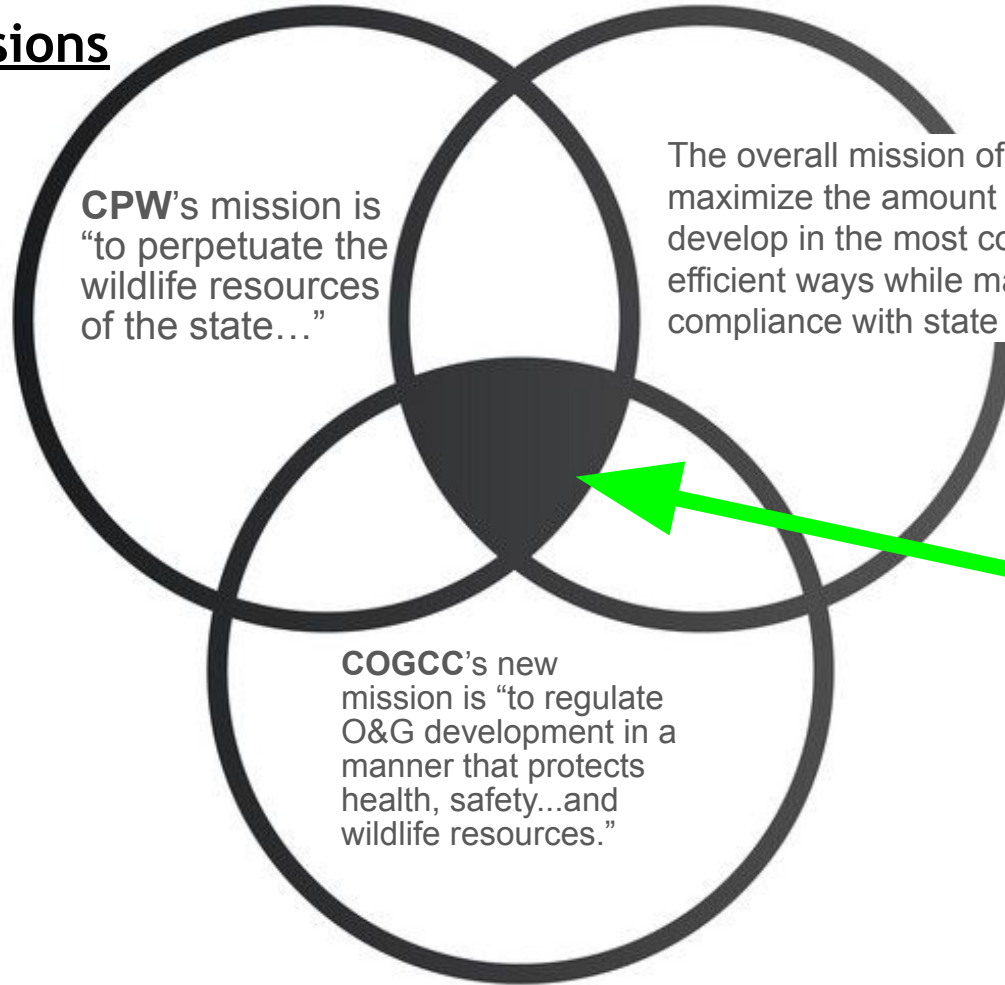
I'd say most (if not all) of us want to protect wildlife species for our enjoyment & so they aren't federally listed.

CPW's mission is "to perpetuate the wildlife resources of the state..."

The overall mission of **Operators** is to maximize the amount of O&G they can develop in the most cost-effective and efficient ways while maintaining compliance with state rules/reggs.

COGCC's new mission is "to regulate O&G development in a manner that protects health, safety...and wildlife resources."

I see this area larger than represented here, as we're all "active stewards of Colorado's natural resources" (per CPW's mission statement)



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Quick Overview of the New 1200 Series Rules

- Took effect 1/15/21. These are COGCC regulated rules - that they implement with input from CPW.
- It was a paradigm shift in how oil and gas development is regulated in CO.
 - SB 19-181 changed the mission of COGCC from “fostering O&G development” to “regulating oil and gas development in a manner that protects public health, safety, welfare, the environment and wildlife resources.”
- COGCC’s wildlife map layers (from CPW’s internal SAM maps for certain species) are *currently available* to operators to avoid, minimize, or the last option - mitigate their impacts for these High Priority Habitats (HPH).

PROTECTION OF WILDLIFE RESOURCES 1200 SERIES

1201. WILDLIFE PLANS

- Wildlife Protection Plan.** Proposed Oil and Gas Operations on new or amended Oil and Gas Locations requiring a new Form 2A, Oil and Gas Location Assessment 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 or approval.
- 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



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SB 19-181 - What has Stayed the Same?

The Basic Concepts are still the same...

- The consultation process should not change significantly for operators who've successfully worked with CPW in the past.
- Early communication is key.
- Pre-application consultations are not required, but highly beneficial:
 - Saves time & efficiency when submitting permit applications.
 - Potentially saves money (review prior to staking & surveys).
 - Can result in waiver agreements with CPW in certain cases.
 - ALA discussions regarding best location for proposed development.



Credit Taylor Elm - since this was from his COGCC presentation in January

What is an HPH?

HPH = High Priority Habitats

- 1) SWAP & economic species
- 2) Good GIS layers (*where are they?*)
- 3) Good BMPs (*what should I do to minimize my impact?*)



Bald Eagle Active Nest:

- NSO/NGD (year-round) within 0.25-mile of active nest. If active nest is located within a highly developed area (10 daily occupied structures within 1/4 mile of nest), then NSO/NGD distance reduced to within 660 feet of the active nest;
- TL - No permitted or authorized human activities within 0.5-mile of active nest from December 1 to July 31. If active nest is located within a highly developed area, no permitted or authorized human activities distance is reduced to within 0.25-mile from December 1 to July 31; CSU/SSR - Pre-construction surveys may be required.

Colorado Parks and Wildlife's (CPW) Recommendations to Avoid and Minimize Impacts to Wildlife from Land Use Development in Colorado	
Species and Associated High Priority Habitat	Recommendations ¹ (by animal type - Big Game, Grouse, Raptors, Other Birds, Small Mammals, Aquatics)
<i>(Brown shading indicates that this habitat map is maintained by the United States Fish and Wildlife Service and can be found at https://ecos.fws.gov/ecp/report/table/critical-habitat.html)</i>	
Big Game	
Bighorn Sheep Migration Corridor	CSU/SSR - Surface density limitation of one pad per section and less than one linear mile of routes per square mile (640 acres). If pad or route density cannot be achieved or maintained, implement offsite mitigation to offset functional habitat loss.
Bighorn Sheep Production Area	NSO/NGD (year-round) in CPW-identified bighorn sheep production areas; TL - No permitted or authorized human activities (including overflights) from April 15 to June 30 (Rocky Mountain Bighorn Sheep) or from February 1 to May 1 (Desert Bighorn Sheep).
Bighorn Sheep Winter Range	TL - No permitted or authorized human activities (including overflights) from November 1 to April 30; CSU/SSR - Surface density limitation of one pad per section and less than one linear mile of routes per square mile (640 acres). If pad or route density cannot be achieved or maintained, implement offsite mitigation to offset functional habitat loss.
Elk Migration Corridor	CSU/SSR - Surface density limitation of one pad per section and less than one linear mile of routes per square mile (640 acres). If pad or route density cannot be achieved or maintained, implement offsite mitigation to offset functional habitat loss.
Elk Production Area	TL - No permitted or authorized human activities from May 15 to June 30; CSU/SSR - Surface density limitation of one pad per section and less than one linear mile of routes per square mile (640 acres). If pad or route density cannot be achieved or maintained, implement offsite mitigation to offset functional habitat loss.
Elk Severe Winter Range	TL - No permitted or authorized human activities from December 1 to April 30; CSU/SSR - Surface density limitation of one pad per section and less than one linear mile of routes per square mile (640 acres). If pad or route density cannot be achieved or maintained, implement offsite mitigation to offset functional habitat loss.
Elk Winter Concentration Area	TL - No permitted or authorized human activities from December 1 to April 30; CSU/SSR - Surface density limitation of one pad per section and less than one linear mile of routes per square mile (640 acres). If pad or route density cannot be achieved or maintained, implement offsite mitigation to offset functional habitat loss.
Mule Deer Migration Corridor	CSU/SSR - Surface density limitation of one pad per section and less than one linear mile of routes per square mile (640 acres). If pad or route density cannot be achieved or maintained, implement offsite mitigation to offset functional habitat loss.
Mule Deer Severe Winter Range	TL - No permitted or authorized human activities from December 1 to April 30; CSU/SSR - Surface density limitation of one pad per section and less than one linear mile of routes per square mile (640 acres). If pad or route density cannot be achieved or maintained, implement offsite mitigation to offset functional habitat loss.
Mule Deer Winter Concentration Area	TL - No permitted or authorized human activities from December 1 to April 30; CSU/SSR - Surface density limitation of one pad per section and less than one linear mile of routes per square mile (640 acres). If pad or route density cannot be achieved or maintained, implement offsite mitigation to offset functional habitat loss.
Pronghorn Antelope Migration Corridor	CSU/SSR - Surface density limitation of one pad per section and less than one linear mile of routes per square mile (640 acres). If pad or route density cannot be achieved or maintained, implement offsite mitigation to offset functional habitat loss.

(To get a copy of this HPH Table - Google "CPW Energy", click on first link, 2nd bullet on the right)

← Use the 2/12/21 version; leads to regulatory certainty across CO.

“What’s New” for Operators to do for Proposed Locations in an HPH polygon

- If operators cannot or will not move out of an HPH polygon, then the rules direct operators to:
 - Complete an Alternative Location Analysis (ALA),
 - Consult with CPW, and
 - Allow operators the option to either complete their own mitigation (for direct and indirect impacts) or pay CPW mitigation fees.
- Operators have to complete a:
 - Wildlife Protection Plan for EVERY new O&G Location in Colorado.
 - Wildlife Mitigation Plan for EVERY new O&G Location in an HPH polygon.
 - The purpose of Wildlife Plans required under these rules is to provide COGCC and CPW with details concerning how the operator plans on conducting oil and gas operations in a manner that is protective of wildlife, including measures to avoid and minimize impacts to wildlife resources and wildlife habitats.



***CPW’s main goal is to protect these sensitive wintering habitats, not to stop/slow O&G development - because we all use O&G.*

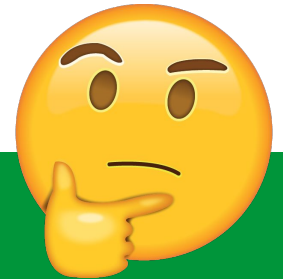
SB 19-181 - Specific Changes



- Wildlife Protection Plan (WPP) - New concept, but simple document outlining adherence or exceptions to statewide operating requirements (1202.a.).
- Wildlife Mitigation Plan (WMP) - Old concept, but can now apply to a single location or multiple locations. WMPs are required within HPHs (will be dynamic based on circumstances).
- Consultation Timeline - CPW consultation timeline is now 60 days from time that CPW receives the permit application.

Wildlife Questions to Consider When Planning an OGD in an HPH

- What HPH layers are present in my area of operations?
- Are all the appropriate parties involved in the early communications?
- Can I include multiple potential locations in a larger landscape-scale Wildlife Mitigation Plan?
- Can I utilize existing infrastructure to minimize disturbance and impacts?
- How can I develop the resource and minimize the density of facilities?
- *(Put others you'd recommend in the chat)*



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Wildlife Protection Plan (WPP)

- Think of this as a due-diligence document (not reviewed by CPW, but available if problems arise and an inspector visits or if the CPW or the public has questions).
- Short checklist (1-2 pages) to address statewide COGCC operating requirements (per Rule 1202a).
 - *This location is not in black bear habitat.*
 - *This location will not be withdrawing from or discharging into surface waters.*
 - *This location is not situated within 500 feet of the ordinary high-water mark of a river, perennial or intermittent stream lake pond or wetland.*
 - *This location will not have any pits.*
 - *If a trench is left open for more than 5 consecutive days during pipeline construction the operator will install wildlife escape ramps at a minimum of one ramp per ¼ mile of trench.*
 - *Operator will use CPW-recommended seed mixes for interim and final reclamation when consistent with the Surface Owner's approval.*
 - *Operator will use CPW-fence recommendations when consistent with Surface owner approval and Local Government requirements.*
 - *Operators will conduct all vegetation removal necessary for Oil and Gas Operations outside of the nesting season for migratory birds (April 1 to August 31). For any vegetation removal that must be scheduled between April 1 to August 31, Operators may implement appropriate hazing measures.*
 - *Etc...*



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Thanks to Verdad for allowing me to share their WPP.

Wildlife Mitigation Plan (WMP)

****DRAFT OUTLINE** Basic Wildlife Mitigation Plan Components *(per COGCC's 1200 rules until their guidance is finalized)***

The below components assumes just one (1) proposed O&G Location, and should be roughly 10 pages. This document will vary per location/OGDP, and could be upwards of 20 pages for a landscape-level WMP. Either way, it should look like a stand-alone document.

- **Introduction** (Who is the agreement between? Why is this agreement necessary? Expiration/renewal dates? A description of any pre-application consultation with CPW)
- **Location(s) Background, Geographic Description** (e.g., Size of the disturbance area, Ownership of the land, other wildlife stips in place (if relevant), Targeted resource, Topography/habitats, Alternative location analysis [pursuant to Rule 304.b.(2).B.viii]).
- **Development Activity** (Intended schedule of disturbance, and give other details)
- **Operating Requirements** (A description of the Rule 1202.a (WPP) + Rule 1202.b operating requirements applicable to the Oil and Gas Location & how the operator will comply.)
- **Mitigation Hierarchy** [Avoidance measures, Minimization measures/BMPs, Mitigation (Direct Impacts - Explain the applicability of 1203.a.; Describe mitigation measures agreed upon for direct impacts, citing relevant rules & providing reasoning. Indirect Impacts - Explain the applicability of 1203.d.; Describe mitigation measures agreed upon for indirect impacts, citing relevant rules & providing reasoning).]
- **Definitions & Literature Cited** (if applicable)
- **Appendices** [Maps - Customized per location (e.g., pull the relevant polygon to attach to 2A if it's a single or multiple location WMP), BMPs]



*Thanks to Dani Neumann
for putting this together*

Not every O&G Location Qualifies for Direct & Indirect Mitigation

Because not all HPH polygons meet the definition of 1202.d

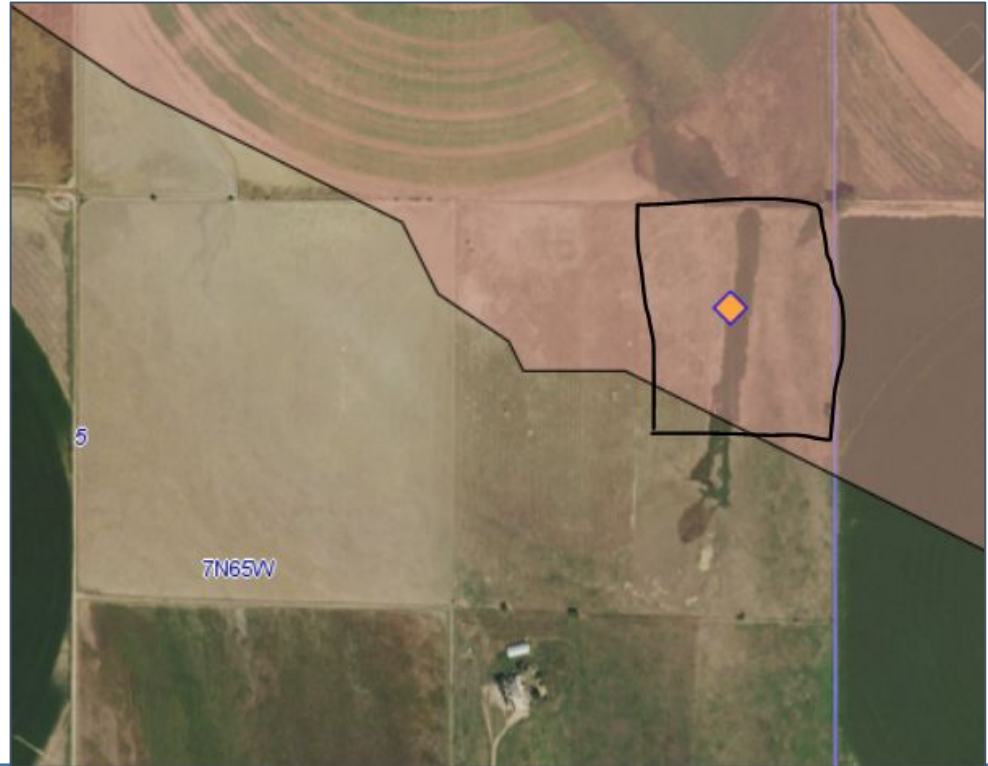
- What are 1202.d species?
 - For the NE Region - this includes:
 - Bighorn sheep migration corridors and winter range;
 - Elk migration corridors, production areas, severe winter range, and winter concentration areas;
 - Mule deer migration corridors, severe winter range, and winter concentration areas;
 - Pronghorn migration corridors and winter concentration areas;
 - Greater prairie chicken production areas;
 - Plains sharp-tailed grouse production areas.
- Or habitat is no longer there...



**Note, just because it's in HPH - does not mean it's an automatic "no" to operators, but a chance to consult and make the best decisions based on site conditions.*

Proposed OGDG Pad in Mule Deer HPH

- We waived direct and indirect mitigation because the habitat was very poor.
- The Rules allow for that based on CPW's assessment - "an off-ramp".



Another example where we recently waived direct/indirect mitigation

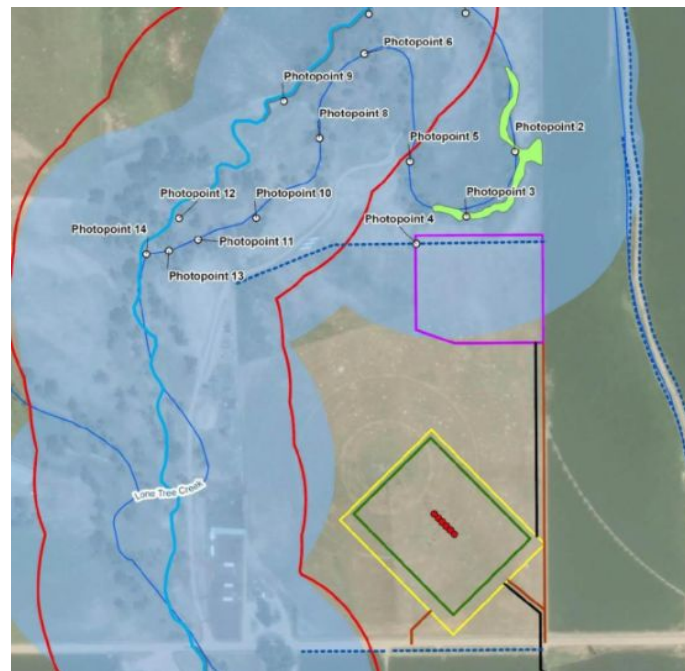


An existing sand and gravel mine previously removed the mule deer severe winter range habitat for the proposed pad (blue circle), even though it is within a mapped HPH polygon.



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Maps get CPW to the consult, but Field Conditions rule the day



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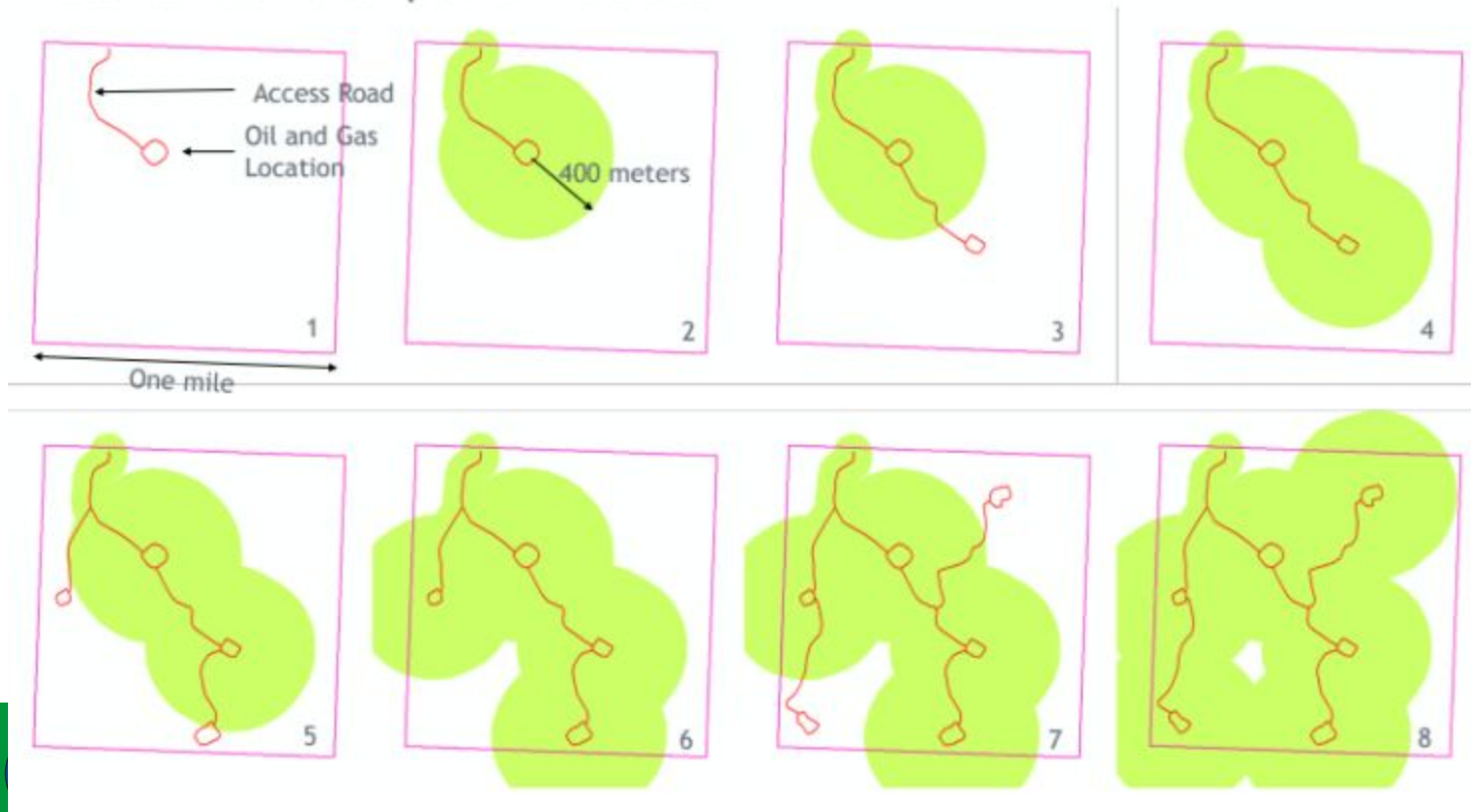
All this to say, CPW is not blindly applying the map layers. Usually a field visit helps to see if avoidance, minimization and mitigation are needed.

How an O&G Location Qualifies for Direct & Indirect Compensatory Mitigation (as stated in Rule 1203)

- (Rule 1203.a) - *In High Priority Habitats listed in Rule 1202.d, the Operator will complete compensatory mitigation to Mitigate direct and Unavoidable Adverse indirect Impacts pursuant to Rules 1203.b-d.*
- Direct Mitigation = all proposed Locations in a 1202.d HPHs, then an operator has to choose one of these options:
 - [Rule 1203.a.(1)] *“Complete a project approved by CPW”* (roughly acre for acre)
 - [Rule 1203.a.(2)] *“Paying a habitat mitigation fee to CPW”* = \$13,750 if less than 11 acres.
 - [Rule 1203.a.(3)] *“The [COGCC] Director may grant an exemption...after consulting with CPW...”*
- Indirect Mitigation = **if the Location causes the density to be >1 or <5 per square mile (per a CPW raster)**, then *“CPW will recommend to the [COGCC] Director whether compensatory mitigation is required for indirect impacts.*
 - CPW may consider (but not limited to) the following factors - existing landscape context, lifespan of the Operation, Alternative locations, use of existing facilities/pads, seasonal construction (CPW’s internal beta calculator).
 - CPW submits our estimated costs/acres to the COGCC Director - who determines the final amount to offset indirect impacts to Wildlife Resources from the proposed disturbance.

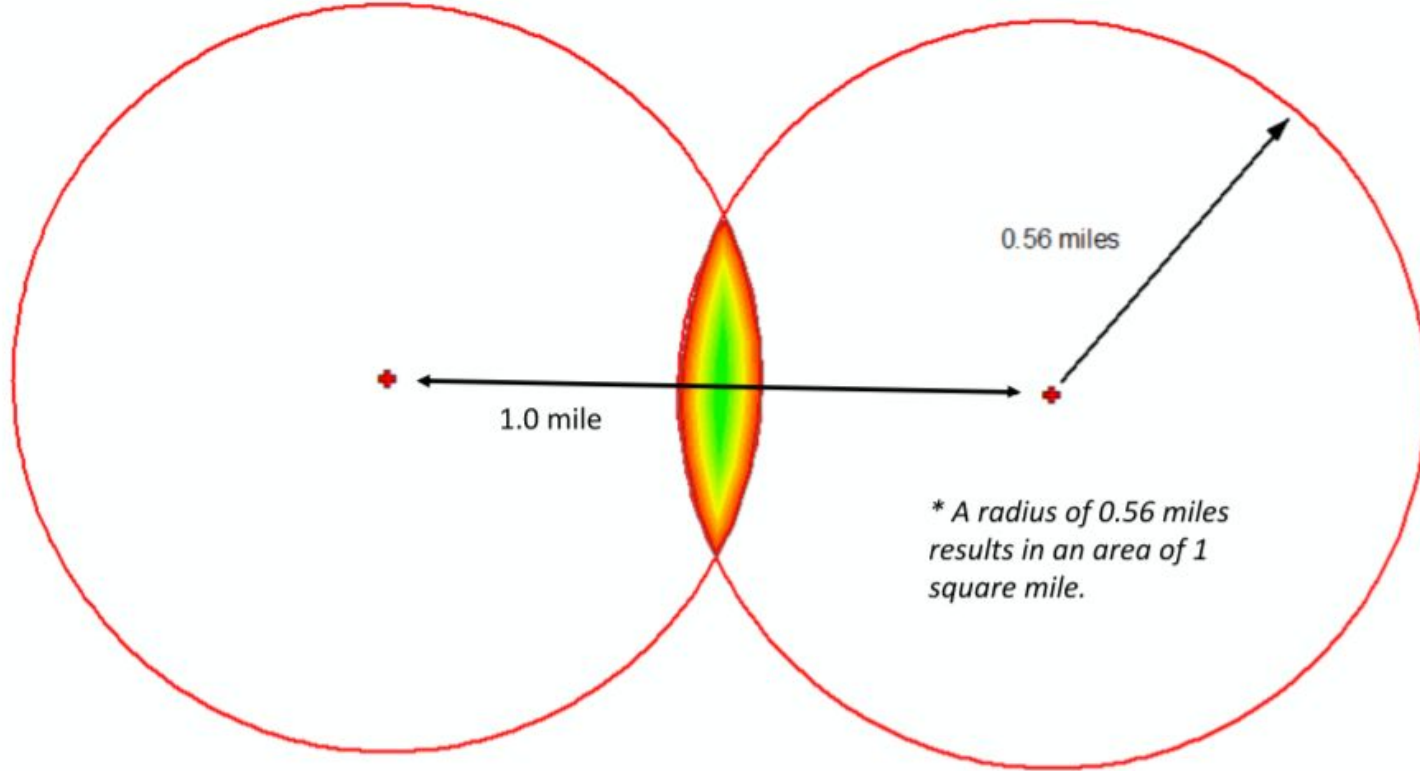
Wildlife Rules Indirect Impacts

Piceance Basin example for mule deer



Credit
Greg D.

Rule 1202.d. Density Determination



To avoid affecting 1202.d High Priority Habitats by densities exceeding one O&G Location per square mile, locations should be spaced 1.12 miles (0.56 miles x 2) apart from each other.

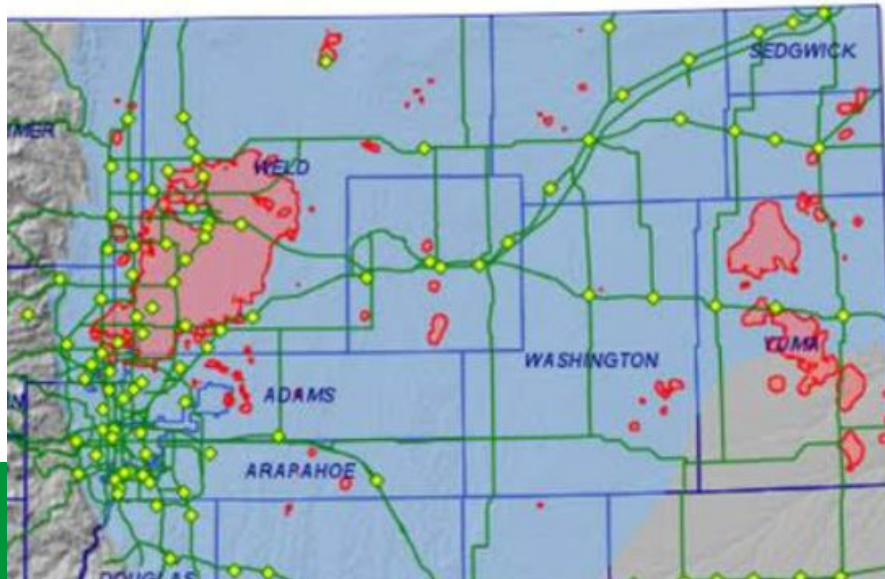


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Credit Brian Magee & Karen Voltura

CPW Indirect Raster

- General guide to areas where the indirect impact discussions are likely not needed due to already highly disturbed habitats.
- Will be up on COGIS soon.
- One caveat - “active locations” include sites permitted but not constructed yet.



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Thanks to Chris E., Taylor Elm & Michelle Flenner for their help with this raster.

Since the 1/15/21, CPW-NE has...

- Visited 10 proposed OGDG sites to understand how to determine Indirect Mitigation (acres or dollars) and when to waive it.
- *Worked with the other CPW Regions & COGCC to develop WPP/WMP outline (*formal guidance coming soon from COGCC*)
 - CPW-NE has reviewed two initial WMPs.
- *Completed Aquatic Nuisance Species specific guidance (per Rule 1202.a.(2))
- *Completed “CPW-approved seed mixes” for the NE Region (per Rule 1202.a.(6))
- Working with the other CPW Regions & COGCC to develop consistent P&A guidance for existing wells in HPH polygons (*coming soon*).
- Working internally on a flow chart for impacts to aquatic waters in borderline situations.

> Kudos to Oxy, PDC, Verdad & Bison and others for their patience as we work toward regulatory certainty & efficiencies while maintaining site flexibility.



E-mail me if you'd like any of these *documents.

Overlapping Missions

While some may want to focus on our differences, I tend to look for similarities.

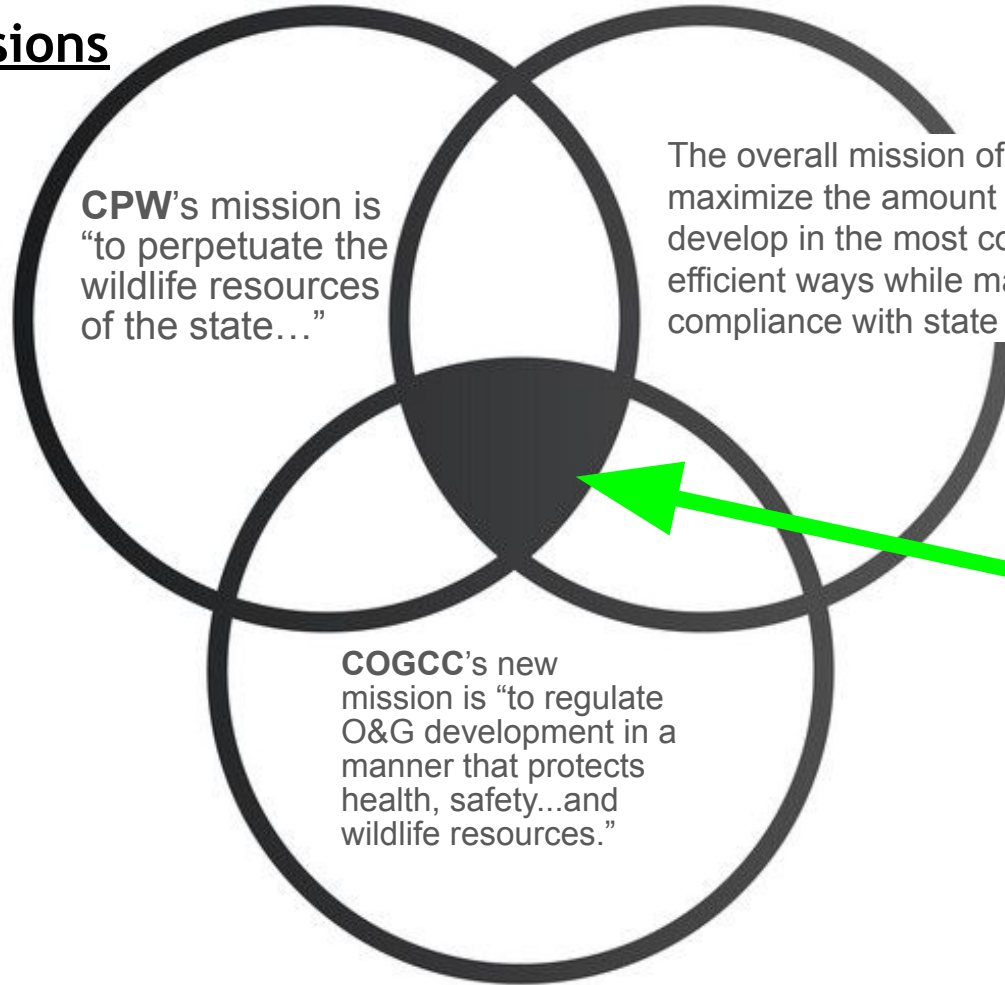
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3 Collaborative Goals Moving Forward...

1. To ensure responsible energy development to have little to no impact to the biological resources in the surrounding area.
2. Help prevent species from being federally- or state-listed.
3. Continue building working relationships between CPW and the Energy Industry, since we all use O&G.

TEAM =

- **Together**
- **Everyone**
- **Achieves**
- **More**



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Questions from the EHS Peer Group (1 / 3)

- Perhaps CPW could present a map of the T&E species and where significant historic and cultural finds are located in or near the parks?
 - *Which parks? Work with SHPO or your consulting archaeologist.*
- Could the CPW provide information on their process for 1202.d when density changes?
 - *GIS Raster that will soon be on COGIS.*
- If a company is working in an area just outside of a HPH buffer, and they are not anticipating to impact that HPH so they do not seek CPW consultation, however, during construction the project area shifts and now they are within the buffer. What is the best course of action?
 - Example: a pipeline is to be constructed 50 feet away from the edge of a HPH. During construction, an unplanned change occurs, moving the pipeline 60 feet (which now causes a disturbance within the HPH buffer).
 - Contact CPW & your OGLA as soon as it's identified. Unplanned changes may result in COGCC enforcement actions as well as direct or indirect mitigation requirements.



Thanks to those of you for submitting questions ahead of time.

Questions from the EHS Peer Group (2/3)

Spill Info to CPW

- ASAP (within 48 hours?)
- Township, Range & Section
- How much oil spilled?
- Did any part of the spill extend beyond the spill containment barrier?
- Did the spill affect any drainage (with or without water)?
- Any wildlife affected (e.g., oily rabbits)?
- No follow-up unless impacted waters/wildlife



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Questions from the EHS Peer Group (3/3)


- Where can we find the list of Area Aquatic Biologists (as referred to for HPH consultation)?
 - *I'm working to get a map (e-mail me if you'd a copy when it's available)*
- What is CPW's approach to compensatory mitigation? *(Discussed above)*
 - How do you see industry partnering with CPW for this?
 - *Creative approaches that can benefit wildlife.*
 - *Use HPH map layers as possible mitigation areas.*
 - *Still having many internal discussions for sideboards.*
 - What benefits are there for operators to select compensatory mitigation versus selecting payment option?
 - *Can help with landscape-scale planning. Can have a double benefit of mitigating impact + goals of local city/county's open space goals. (Others TBD - or put those you can think of in the chat).*
- Can CPW please provide clarity for expectations for wildlife protection plans / wildlife conservation plans? *(Discussed above + COGCC guidance coming soon)*



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Other questions (if time allows)

Feel free to contact me anytime...

- Call my office phone - (303) 291-7327
- E-mail - brandon.marette@state.co.us
- In the field (site-by-site)
- Presentation for your company?
- **LinkedIn** 



Thanks for your time today as we collaboratively & responsibly protect sensitive wildlife habitats!