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STATE OF NEW MEXICO  
DEPARTMENT OF GAME & FISH

One Wildlife Way  
Post Office Box 258112  
Santa Fe, NM 87504  
Phone: (505) 476-8008

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December 3, 2008

Ms. Florene Davidson, Administrator  
NM Oil Conservation Division  
1220 South St. Francis Drive  
Santa Fe, NM 87505

Re: Oil Conservation Commission (OCC) Case 14255, Proposed Amendment of 19.15.39 NMAC;  
NMDGF Project No. 12343

Dear Ms. Davidson:

In response to the OCC Notice of Public Hearing for 11 Dec 2008, the New Mexico Department of Game & Fish (NMDGF) has reviewed the above referenced document. Proposed new sections 19.15.39.9 and 19.15.39.10, would require operators to obtain the approval of the Oil Conservation Division (OCD) for an exploration and development plan prior to drilling, re-entering or deepening a well in Santa Fe County or the Galisteo Basin, and sets out conditions that will be applied to applications for permits to drill, re-enter or deepen a well covered by such a plan. Please accept this letter as our pre-hearing written comment on the proposed amendment.

NMDGF was identified as one of 11 administrative agencies responsible for addressing the objectives of Governor Richardson's Executive Order (EO) 2008-04 *Imposing a Six Month Moratorium on New Oil and Gas Drilling in Santa Fe County*. As directed in the EO, NMDGF solicited and received comments from the public. In correspondence with the Energy, Minerals and Natural Resources Department (EMNRD) dated 24 May 2008, we submitted a report evaluating the 55 public comments we received, identifying pertinent agency laws, regulations and policies, and outlining five specific recommendations, four of which could involve action by EMNRD. Those recommendations included:

1. Implement some or all of the report recommendations stemming from the Oil and Gas Working Group of the Western Governors' Association (WGA) Wildlife Corridors Initiative.
2. Implement some or all of the recommendations in the NMDGF document *Oil and Gas Development Guidelines: Protecting New Mexico's Wildlife Habitat and Wildlife*.

3. Enact setback distances for oil and gas wells from important aquatic and riparian habitats such as springs, wetlands and drainages, including the Galisteo River.
4. Develop a consultation protocol for review of oil and gas leases, permits and stipulations between OCD and NMDGF.

In response to a request by EMNRD, a supplemental report was provided by NMDGF on 20 June 2008, with additional background information and support for the initial recommendations. A copy of the supplemental correspondence is enclosed for your reference. Our comments below address potential means by which the previous NMDGF recommendations to EMNRD regarding EO 2008-04 could be implemented using the mechanism provided by the current proposed amendment.

- 19.15.39.9** NMDGF strongly supports the proposed requirement for a plan of exploration or development. Such plans are identified in the NMDGF *Oil and Gas Development Guidelines* as a tool to reduce habitat loss and fragmentation. In addition to the required elements proposed, we recommend that **the plan should also include a description of the methods by which the project area will be reclaimed and revegetated.**

In addition to the proposed required maps, we recommend that **the plan should also include mapping of habitat types and important habitat features.** Also in addition to the proposed requirements for a hydrogeologic and site report, we recommend that **the site report should also include baseline information regarding fish and wildlife habitat.** Habitat information could include identification of crucial habitats and migration corridors as mapped by NMDGF and the WGA Initiative, key habitats and Species of Greatest Conservation Need documented in the Comprehensive Wildlife Conservation Strategy for New Mexico, potential occurrence of special status species, background levels of noise and traffic, and/or description of vegetative associations.

Each of these topics is identified as an element of oil and gas plans of development in the 2004 WGA document *Coal Bed Methane Best Management Practices: A Handbook*. NMDGF also supports the inclusion of NMDGF in public notice requirements, and we look forward to consultation with EMNRD in the future regarding evaluation of specific plans of development

- 19.15.39.10** NMDGF strongly supports the requirement for closed loop drilling systems, also a recommendation from our *Oil and Gas Development Guidelines*. Closed loop systems most effectively eliminate the potential for wildlife entrapment or exposure to harmful substances that may be toxic or cause fouling of fur or feathers. Closed loop systems also minimize potential contamination of surface soil and thus encourage the successful reestablishment of vegetation.

In addition to the proposed new conditions on applications to drill, we recommend a

**specific set-back distance from perennial, intermittent and ephemeral surface water features.** The set-back should apply from the edge of the disturbed ground to the edge of the riparian or wetland habitat. Please refer to the enclosed 20 June 2008 report for more discussion of this issue.

Thank you for the opportunity to comment on this proposed NMAC amendment. The proposed amendment mentions OCD's responsibility to protect the "environment" but not wildlife resources specifically. It is the position of NMDGF that wildlife and effects to wildlife should be considered along with other elements of the human and natural environment of the Galisteo Basin. If there are any questions, please contact Rachel Jankowitz at 505-476-8159, or [rjankowitz@state.nm.us](mailto:rjankowitz@state.nm.us).

Sincerely,



Matthew Wunder, Ph.D.

Chief, Conservation Services Division

cc: Acting Ecological Services Field Supervisor, USFWS  
Rachel Jankowitz, Energy/Mining Habitat Specialist, NMDGF  
Chuck Hayes, BISON-M, Share with Wildlife Coordinator, NMDGF  
Mark Watson, Terrestrial Habitat Specialist, NMDGF  
Scott Draney, NE Area Habitat Specialist, NMDGF