

New Mexico Wildlife Federation



Protecting Our Outdoor Way Of Life Since 1914

2610 San Mateo Blvd. NE, Suite A, Albuquerque, NM 87110-3162
505-299-5404 (office) 866-844-5638 (fax)
www.nmwildlife.org

November 24, 2008

Florene Davidson
Commission Clerk
Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

Re: Notice of Recommended Modifications, Case No. 14255, Docket No. 43-08

Dear Ms. Davidson:

Thank you for the opportunity to comment on the Oil Conservation Division's ("OCD") Application For Rule Amendment, Case No. 14255 ("Application") for the Galisteo Basin. At this time, we are submitting proposals for changes¹ to the actual language of the proposed rule. We will also be submitting more general comments before the December 3, 2008 deadline.

1. Throughout the rule changes, there are provisions added to ensure that oil and gas plans do not negatively impact fresh water, human health, and the environment. While we support and applaud OCD's consideration and protection of these incredibly important values, we believe that the rule should also include consideration of wildlife and plant species as well. As such, we propose the addition of the following language in all places where the rule includes consideration of the values mentioned above. The following example is in Subsection B and we have included additional examples in our comments below:

(12) other information that the division may require to demonstrate that the plan will prevent waste, protect correlative rights, protect fresh water, protect human health and the environment, including wildlife and plant species, and will assure the division that operation of the plan will be in compliance with division rules and orders;

In addition, we propose the addition of a new Subsection B(5)(k):

(5)(k) the location of site features such as flood plain designations, water courses, watersheds, drainages, ditches, intermittent, and ephemeral water bodies (including but not limited to playa lakes, arroyos and draws), wetlands or aquatic habitat, significant plant ecosystems, wildlife habitat and migration routes, geologic features, vegetative cover, known areas of historical,

¹ All suggested changes are made in track changes format with additions underlined and deletions in strikethrough.

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archeological or cultural significance, recreational areas, and otherwise environmentally culturally or socially significant or sensitive areas which may be impacted by the proposed plan.

2. We recommend the inclusion of a new Subsection B(12) to reinforce and complement Subsection (C) and properly ensure that exploration and development plans are, in fact, plans that account for existing and reasonably foreseeable oil and gas development. Such a provision would better ensure that exploration and development of oil and gas is properly coordinated, through time, in the Galisteo Basin and better ensure that the evaluation of exploration and development plans is cognizant of the cumulative exploration and development potential – and the consequent cumulative impacts of such exploration and development – within the Galisteo Basin. New Subsection B(12) would read:

(12) data and analysis addressing existing and potential oil and gas development relevant to the application, whether conducted by the applicant or by another operator, including:

- (a) other pending or approved Exploration and Development Plans subject to these provisions pursuant to Subsection A.
- (b) a good faith forecast of reasonably foreseeable future exploration and development within the area subject to the application.
- (c) pending or approved exploration and development within two (2) miles of the external boundaries of the Galisteo Basin as defined by Subsection A.

Adoption of this recommended provision would necessitate changing existing Subsection B(12) to B(13) and B(13) to B(14).

3. We reiterate our support for OCD's provisions to "prevent waste, protect correlative rights, protect fresh water, and protect human health and the environment," as set forth in Subsections (B)(12), (J)(2)(d), (J)(3), (J)(4). In keeping with that support, we request that OCD explain that this authority includes the ability to prevent, or at the very least mitigate, impacts from oil and gas development, consistent with valid existing rights.
4. OCD states that it "may approve an exploration and development plan *only if* . . . the plan will prevent waste, protect correlative rights, protect fresh water, and protect human health and the environment." Application, ¶ 29 (emphasis added). However, the proposed rule itself does not accurately reflect this statement. Additionally, Subsection J(3)'s reference to oilfield waste should be struck as it appears unnecessarily and confusingly limiting on the Division's authority to impose conditions of approval. As such, we propose the following changes (shown in track changes) to Subsection J:

(3) The division shall ~~may~~ impose conditions on its approval of an application for an exploration and development plan or an amendment or renewal of an exploration and development plan if the division determines that the conditions are necessary to prevent waste, protect correlative rights, protect fresh water, and protect human health and the environment, including wildlife and plant species~~from oil field waste~~.

(4) The division shall ~~may~~ include provisions in a special pool order that replaces an exploration and development plan if the division determines that the provisions are necessary to prevent

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waste, protect correlative rights, protect fresh water, and protect human health and the environment, including wildlife and plant species

5. OCD states that the Energy, Minerals, and Natural Resource Department's recommendations included adopting rules that provide for notice and public input on applications. Application ¶18. We applaud OCD's changes which allow for public input into this process as an incredibly important step forward. Consistent with OCD's proposed changes, we ask that OCD add language clarifying how and when the public will be able to submit comments on a proposed plan. We propose the following additions to Subsection H, or alternatively we propose adding the following language to a new subsection entitled "Public Comment":

H. Public Notice and Comment

(4) Public comments on the proposed plan will be accepted for 45 days following the publication of the legal notice. This time period is computed using calendar days, including Saturdays, Sundays, and State holidays. However, when the time period expires on a Saturday, Sunday, or State holiday, comments shall be accepted until the end of the next State working day (11:59 p.m.).

Again, thank you for the opportunity to submit comments on the proposed language. We commend OCD in its efforts to provide for a more holistic approach to oil and gas applications. In particular, we are happy to see OCD's inclusion of provisions that will help ensure that oil and gas drilling does not degrade our environment and water, as well as OCD's incorporation of greater public involvement in the oil and gas application process.

If you have any questions, or would like to discuss these comments, please do not hesitate to contact us.

Sincerely,

Jeremy Vesbach
Executive Director
New Mexico Wildlife Federation
2610 San Mateo Blvd. NE, Suite A
Albuquerque, NM 87110
(505) 299-5404

Oscar Simpson
New Mexico Public Lands Organizer
National Wildlife Federation
3320 12th St NW
Albuquerque, NM 87107
(505) 345-0117

Johnny Micou
Executive Director
Common Ground United
PO Box 23150
Santa Fe, NM 87502
(505) 474-3061

Gene Tatum
President
Albuquerque Wildlife Federation
PO Box 1234
Albuquerque, NM 87103
(505) 255-1960

NOV 29, 2008

Comments to ~~OIL AND GAS ORDINANCE~~ (Revised 11-13-08, 4:00PM, MST)- By ~~Doug Patrick~~ - RESEARCH & DEVELOPMENT ENGINEER

Note: comments/revisions in *italic*

ENGINEER


And ~~strikethrough~~ text means delete (that text)

11.14.6 to determine if the proposed location is in a geologic hazard area or an area with slopes equal to or exceeding eleven (11 %) percent: *Ridge top Rules exactly as required on any development within Santa Fe County shall apply. Slopes 10 percent or less may meet terrain management requirements as adopted by the County of Santa Fe- Slopes of 15% will require modification to be designated build areas. Slopes greater than 30% are NO BUILD AREAS WITHOUT EXCEPTION...*

11.25.4 Fracturing operations shall only use fresh water as the fluid component of the fracturing material. Water and sand used in fracturing operations shall not contain dissolved hydrocarbons or other toxic contaminants. The use of synthetic fracturing fluids is prohibited. Fracturing with brine is prohibited. Fresh water that meets or exceeds drinking water standards shall be used and such water shall be obtained from the County or a municipal system that supplies drinking water, or a private source, and shall comply with the Water Availability Assessment. ~~If the County Petroleum Engineer agrees, subject to water and engineering evidence, that use of fresh water during fracturing operations would damage the rock formation so that the oil and gas cannot be recovered, use of other fluids may be authorized so long as the amount of constituents of the fluids are on the prescribed list of chemicals, or materials established by the Petroleum Engineer and approved by the Board. Fracturing pressures shall be strictly controlled as provided in the previous paragraph to the satisfaction of the County Petroleum Engineer and oil and gas inspector, a ground water monitoring program is established, and the need for the use of the specific constituents are verified by the County Petroleum Engineer and approved by a medical professional, both to be selected by the County.~~

11.28 Visual Impacts

The Oil or Gas Facility or Facilities shall use structures and equipment of the minimum size necessary to satisfy the functional requirement of the Facility. The Operator shall use low profile pumps and equipment to mitigate the adverse visual impacts caused by the Facility or Facilities. *Again Ridge top Rules shall apply along with the same height restriction standards imposed by the*

County for all development regardless of the type of construction. Also, the reflectance of materials shall be minimized by using pigments that match the landscape such as earthen colored structures in hues of browns similar to what is usually required for homes. Also, existing development covenants as established for a given subdivision and filed in Santa Fe County shall apply to any development. Changes to these covenants shall only be made through due process by the surface owners as noted in the adopted covenants.

11.36.2.3 Notwithstanding any other penalty or remedy provided for in this Section, the County ~~may~~ **will be required, on finding a violation of provisions of this Section, revoke or suspend any Oil and Gas Overlay Zoning District Classification or SUDP governing the Oil or Natural Gas Facility or Facilities that the County finds to be violating the provisions of this Section upon the same notice and public hearing requirements applicable to the application for the Overlay Zone. The County ~~may~~ **will be required** also to revoke any development order if it is determined that the Operator provided false, misleading, deceptive or inaccurate information and/or documentation to secure issuance of the Oil and Gas Overlay Zoning Classification or Special Use and Development Permit. **The Operator or any entity legally or formerly associated with that Operator in any form will never be considered for any future development permit in Santa Fe County and will be suspended from any development in Santa Fe County.****