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Statement of Basis, Specific Statutory Authority, and Purpose Amendments to Current Rules of the Colorado Energy and Carbon Management Commission, 2 C.C.R. § 404-1

Cause No. IR Docket No. 240200054

2024 High Priority Habitat Maps Rulemaking

This statement sets forth the basis, specific statutory authority, and purpose for amendments (“High Priority Habitat Maps Rulemaking”) to the Colorado Energy and Carbon Management Commission (“ECMC” or “Commission”) Rules of Practice and Procedure, 2 CCR 404-1 (“Rules”).

Unless otherwise specified, the new rules and amendments become effective twenty days after publication in the Colorado Register, per C.R.S. § 24-4-103(5).

In adopting amendments to the Rules, the Commission relied upon the entire administrative record for this rulemaking proceeding, which formally began on February 28, 2024, when the Commission submitted its Notice of Rulemaking to the Colorado Secretary of State for revisions to its 100 Series definitions. This record includes public comments, written prehearing statements, written prehearing testimony, and oral testimony and comments provided during public hearings and Commission deliberations. The Commission also took notice of the record for the 2020 Mission Change Rulemaking (Docket No. 200600155), the 2021-22 High Priority Habitat Maps Rulemaking (Docket No. 211200249), and the 2022-23 High Priority Habitat Maps Rulemaking (Docket No. 230200062).

Statutory Authority.

The Commission’s authority to promulgate amendments to the Rules is derived from the following sections of the Colorado Oil and Gas Conservation Act (“Act”), C.R.S. §§ 34-60-101 - 130:

- C.R.S. § 34-60-105(1), (Commission has the power to make and enforce rules);
- C.R.S. § 34-60-106(2.5)(a), (Commission will regulate oil and gas operations in a reasonable manner to protect and minimize adverse impacts to public health, safety, and welfare, the environment, and wildlife resources);
- C.R.S. § 34-60-108, (Commission has authority to adopt rules); and
- C.R.S. § 34-60-128(2), (Commission will minimize adverse impacts to wildlife resources).

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Identification of Amended Rules.

Consistent with its statutory authority and its legislative mandates, and in accord with the administrative record, the Commission amended the 100 Series definition of High Priority Habitat to amend certain maps of High Priority Habitat in Appendix VII.

Overview of Purpose and Intent.

During the Commission's Senate Bill 19-181 Rulemaking proceedings in 2020, it developed a definition for High Priority Habitat, which focuses on ensuring healthy wildlife populations by deferring to the expertise of Colorado Parks and Wildlife ("CPW") in identifying the species and habitats for which avoiding, minimizing, and mitigating impacts is critical based on the best available science. In adopting this definition, the Commission chose to use High Priority Habitat as the criteria to initiate certain permitting or review processes and substantive standards in its 300, 400, 900, and 1200 Series Rules. High Priority Habitat is an accepted CPW term that provides certainty that there is known geographic distribution of the habitat and species, impacts from development (oil and gas or otherwise) are well understood, and there is consensus on effective measures to protect the resource.

Maps showing spatial data identifying the individual and combined extents of the High Priority Habitat areas were provided by CPW and attached to the 1200 Series Rules as Appendix VII. As stated in the 100 Series definition of High Priority Habitat, the Commission intended to coordinate with CPW to determine the current and relevant data upon which it will base the High Priority Habitat maps and to periodically update the maps. The extent of the High Priority Habitat is subject to periodic updates, but no more frequent than on an annual basis and will be modified only through the Commission's rulemaking process described in Rule 529.

CPW conducts an annual species activity ("SAM") process, which covers a broad range of habitats and information that is used in all CPW land use comments, as well as federal and local planning processes. An applicable subset of those maps is utilized for ECMC rulemaking and updated annually. SAM sessions are held each year, generally focused in one of four CPW regions where CPW GIS staff works with district wildlife managers, area biologists, and other local staff. Existing maps are displayed, then overlaid with aerial photographs and maps to look at underlying landscape and potential changes, as well as all available biological data to assess whether revisions are necessary. Years of professional experience and multiple sources of information are captured in these maps: ground observations; information shared by wildlife watchers, landowners, and hunters; flight survey data, collar data, and research data as available; and habitat and vegetation changes. These maps reflect decades of observations and data, as well as collective professional expertise that summarizes wildlife use of the landscape. SAM definitions and data are publicly available from CPW GIS links on their website.

The most recent High Priority Habitat map updates from CPW incorporate updates to big game seasonal habitats (winter concentration areas, severe winter ranges, migration

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corridors, and production areas), Columbian sharp-tailed grouse winter range, bald eagle roost sites, least tern and piping plover production areas, and bat winter hibernacula. Additionally, there are several High Priority Habitat layers that either receive changes every year on a statewide basis or are modified outside of the SAM process. These include layers such as grouse and prairie chicken lek sites and production areas, raptor nest sites, aquatic habitats, and U.S. Fish and Wildlife Service designated critical habitats. A majority of the proposed changes for 2024 are within CPW's Northwest Region.

CPW proposes notable changes to mule deer and elk migration corridors in the Northwest Region, with less significant changes to pronghorn and bighorn sheep migration corridors. There are also proposed updates to a handful of migration corridors within CPW's Southwest Region, outside of their scheduled 2024 SAM mapping process. In the last several years, CPW has invested considerable resources into analyzing big game migration corridors and migration pinch-point areas across the state. These efforts have been tied to the SB-181 oil and gas regulatory process and several state and federal policy and planning efforts that have focused on big game migration in Colorado.

Overall, SAM mapping updates to big game winter range High Priority Habitat in CPW's Northwest Region resulted in considerable overall additions to the total area covered by these habitat types. Specifically, elk severe winter range and winter concentration areas incurred the largest overall increases, both in overall acreage and the percent change from previous totals (bighorn sheep winter range also results in a large percentage increase, but much lower changes to overall acreage). However, it's important to note that the overall acreage of High Priority Habitat coverage did not necessarily expand proportionately with these changes to mapped elk winter habitat, since much of the expanded areas were already previously mapped by CPW as another High Priority Habitat layer (e.g., greater sage-grouse habitat). Changes to big game winter range High Priority Habitat layers were typically made based on the results of annual big game winter classification flights, GPS collar locations during the winter period, and field observations of animal use and habitat conditions.

CPW proposes modest increases (~7%) throughout the region for elk production areas, and a larger percent increase (~24%) to bighorn sheep production areas. Overall, the changes to elk production areas are driven mostly by the availability of new GPS collar data that has been collected from ongoing research and management projects. From 2018 to 2023, CPW has deployed approximately 1,029 collars on adult elk in the Northwest Region. By aggregating thousands of GPS location points for female elk during the calving season, CPW field staff have been able to identify new calving/production areas that were previously undocumented. To a lesser degree, field observations, reports from qualified volunteers and federal biologists, and wildfire burn areas also contributed to changes within both elk and bighorn sheep production areas.

Greater sage-grouse (GrSG) High Priority Habitat consists of four layers: lek sites, priority habitat management areas (PHMA), general habitat management areas (GHMA), and undesignated habitat. For the 2024 High Priority Habitat revisions, CPW

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is proposing two relatively small changes to the overall habitat map boundaries. Both areas are located in Moffat County and are the result of new sage-grouse data indicating changes in distribution and habitat use during the last several years.

CPW aquatic biologists conducted a statewide review of designated aquatic High Priority Habitat buffers within their respective areas. These consist of sportfish management waters, native fish and other native aquatic species conservation waters (native species waters), and cutthroat trout designated crucial habitat.

In summary, the underlying purpose of the ECMC regularly adopting CPW current High Priority Habitat map updates is to ensure (1) that the Commission's wildlife data does not become outdated and (2) that CPW's maps and recommendations apply statewide to all consultations. The data contained in the High Priority Habitat map layers and included in this 2024 update are intended to ensure the reasonable and necessary regulation of the industry and ensure the protection of wildlife resources through the application of the mitigation hierarchy. ECMC first seeks to avoid impacts to habitat from oil and gas development through alternative location selection, consolidation, and other avoidance measures. If development without avoidance is not possible, then the Oil and Gas Development Plan permit process ensures that adverse impacts, whether direct or indirect, are minimized through operational and best management practices established during the CPW consultation process. And lastly, where there are unavoidable direct or indirect impacts, Rule 1203.d provides that offsetting mitigation, through compensatory fees or projects, be provided to mitigate those impacts.

The High Priority Habitat maps serve as a starting point to identify proposed locations for oil and gas development that may require avoidance measures, such as alternative locations or consolidation, or mitigation and mitigation measures, to protect wildlife resources. On a case-by-case basis, and in consultation with CPW, operators may demonstrate to the Commission that either species or habitat is not present so that avoidance, mitigation, or minimization measures are not required. *See* Rule 309.e.

The record, including the High Priority Habitat maps, CPW's description at hearing and prior High Priority Habitat map rulemaking hearings of its process to create the maps and the data supporting the maps, and statements of the parties to the rulemaking, combined to create a complete record to support the Commission's adoption of the updated maps into ECMC's permitting process.

Amendments and Additions to Rules.

100 Series Definition of High Priority Habitat.

The High Priority Habitat maps set forth in Appendix VII are amended to reflect the current understanding of wildlife habitat use in Colorado for the species identified as High Priority Habitat in its 300, 400, 900, and 1200 Series Rules. These proposed updates are a result of inventories and monitoring to determine the status and extent of the following High Priority Habitat areas: big game seasonal habitats (winter

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concentration areas, severe winter ranges, migration corridors, and production areas), Columbian sharp-tailed grouse winter range, bald eagle roost sites, least tern and piping plover production areas, and bat winter hibernacula. These updates also reflect changes to any CPW-owned State Wildlife Areas and State Parks within the State of Colorado.

Effective Date.

The Commission adopted the proposed amendments at its hearing on May 22, 2024, in Cause No. IR, Docket No. 240200054. These amendments will become effective, per C.R.S. § 24-4-103(5), twenty days after publication in the Colorado Register.