Colorado Parks & Wildlife Responses to Comments on the Draft Updates to the Colorado Oil and Gas Conservation Commission Sensitive Wildlife Habitat and Restricted Surface Occupancy Area Maps, September 2013

1. **Definition of bald eagle winter night roosts sensitive wildlife habitat (SWH).**

   A commenter requested information on how bald eagle winter night roost (BEWNR) sites were delineated. The commenter wanted clarification of the use of the ¼ mile buffer.

   Response:

   The definition of winter night roosts is "*Groups of individual trees that provide nocturnal perches for wintering bald eagles: includes a buffer zone extending ¼ mile around these sites*". BEWNR sites have been delineated over time by Colorado Parks & Wildlife (CPW) district wildlife officers and biologists. Only areas within delineated BEWNR polygons require consultation. In the past these have been delineated on 1:50,000 scale maps. As technology has progressed CPW has delineated these areas on 1:24,000 scale maps. In the past there have been estimates of buffer zones around roost trees. Currently CPW is using detailed digital aerial photos which allow delineation of actual stands of trees. This has resulted in more accurate maps for more recently mapped areas. The delineated trees are buffered by ¼ mile. As time progresses CPW will revise older mapped areas to this higher map standard.

2. **RSO and SWH maps on the eastern plains of Colorado (east of Interstate 25).**

   A commenter asked about the lack of restricted surface occupancy area (RSO) and SWH maps east of I-25 in Colorado.

   Response:

   There are multiple RSO and SWH areas east of the Interstate. These include the Lesser prairie-chicken focal area, Plains sharp-tail grouse production area, Bald eagle winter night roost and Bighorn sheep winter range SWH maps. In addition there are Lesser prairie chicken leks, Plains sharp-tail grouse leks, Bald and Golden eagle nest sites, Ferruginous hawk nest sites, Prairie falcon nest sites, Osprey nest sites and Bighorn sheep production area RSO maps. As for big game species such as mule deer and pronghorn CPW acknowledges that there is widespread winter use of habitat east of Interstate 25. However these areas are not as constricted and limited as winter ranges in the mountainous areas of Colorado and hence were not included in the maps. CPW will continue to evaluate how to best map big game habitat across the eastern plains of Colorado in a manner that distinguishes relative importance of habitat. Future updates to COGCC rules and maps could incorporate sensitive wildlife habitat for deer and pronghorn east of I-25 if such refined mapping were to be completed.

3. **Inclusion of tributaries to Beaver Creek around Tepee Park Ranch in Cutthroat trout designated critical habitat RSO map.**

A commenter challenged the inclusion of tributaries of Beaver creek in Garfield county Colorado.

Response:

Black Diamond Minerals, LLC met with CPW in July, 2009 to discuss cutthroat trout RSO designation of Beaver Creek and its tributaries in the Tepee Park area. CPW staff reviewed the information that their consultant had developed and concluded that their collection of physical data did not warrant changes to the existing COGCC map. Our conclusion was based on the interconnectivity of Beaver Creek and its tributaries, and how upstream disturbances could affect downstream populations, particularly with respect to sedimentation and water quality. Unoccupied stream reaches can contribute seasonal flows and if disturbed, can also contribute significant sediment loads to downstream areas during runoff and as a result of monsoonal precipitation events. In these situations, it is important to protect unoccupied or intermittent stream sections to prevent damage to occupied downstream reaches.

Since 2009 when our last discussions occurred, additional genetic analysis capabilities have been employed to further elucidate cutthroat trout genetics. We have discovered that the Beaver Creek populations of cutthroat trout are "Lineage GB". The U.S. Fish and Wildlife Service have requested that Section 7 consultation be applied to any conditions that may jeopardize their continued existence. This designation will require consultation with USFWS and CPW believes consultation should continue with CPW under the existing map.

Our previous offer to meet with Black Diamond on-site to discuss infrastructure locations with the intent of possibly modifying RSO specifications in situations where the development of onsite and offsite mitigation strategies would be of mutual benefit is still valid. This is a standing offer to work together to resolve differences and we welcome further communications with Black Diamond Minerals, LLC.

4. **Proposed change from Lesser prairie-chicken production areas to Lesser prairie-chicken focal areas for prairie-chicken SWH map.**

Several commenters objected to CPW's proposed change from Lesser prairie-chicken production areas (being 2.2 mile buffers around active leks) to focal areas which were delineated as part of the development of the five state Range-wide Lesser prairie-chicken conservation plan.

Response:

The Lesser Prairie-chicken (LEPC) Range-wide Conservation Plan (RWP) is being developed by Colorado, Kansas, Oklahoma, Texas and New Mexico through the LPEC Interstate Working Group and the Western Association of Fish and Wildlife Agencies. The RWP has been developed to comprehensively address threats to LEPC in order to preclude the need to list the species as Threatened under the Endangered Species Act. An integral part of the RWP approach is the designation of focal areas. Focal areas have been designed to support the population goals set

forth in the RWP. The focal areas were delineated by CPW biologists using data sources such as lek locations, modeled habitat (from the Southern Great Plains Crucial Habitat Assessment Tool), county soil series maps and information from local experts. The RWP employs a conservation framework which encourages increased habitat enhancement and restoration in focal areas and which provides a voluntary framework to encourage the avoidance, minimization and mitigation of new impacts within focal areas. CPW believes the focal areas represent important areas for the conservation and recovery of LEPC and require consultation to avoid, minimize or mitigate impacts. Although the RWP has not been finalized as of this date, it has received extensive review by public stakeholders and the U.S. Fish and Wildlife Service. Additionally, the conservation framework in the RWP has been formally endorsed by the governors in all five LEPC states. (http://www.westgov.org/news). A final public review of the RWP is currently in progress and a final version is anticipated by Nov. 1, 2013.

5. **Proposed change for Gunnison sage-grouse (GuSG) production areas. Include all areas within a 4 mile buffer of active leks for Gunnison sage-grouse production area SWH map.**

Several commenters have objected to CPW changing the definition for Gunnison sage-grouse production areas.

Response:

Approximately 85% of GuSG are known to nest within a 4-mile radius of active lek sites based on CPW research. This is supported by research in Colorado and elsewhere for the more widely studied Greater sage-grouse. The existing Colorado Oil and Gas Conservation Commission (COGCC) GuSG production area map was created by placing a 4-mile buffer around lek sites and "clipping" the buffer to include only the sage brush vegetation type in which grouse are known to nest. The resulting map displays production areas as only the sage brush habitats within 4 miles of an active lek site. We have learned that the present production area map is not sufficiently protective of GuSG lek sites or nesting activities for the following reasons:

a. Gunnison sage-grouse have frequently been documented using significant areas of mountain shrub, agricultural, Conservation Reserve Program, and even pinyon-juniper woodlands when mixed with sagebrush or mountain shrubs. This particularly occurs in the more sensitive satellite populations outside of the Gunnison Basin, but also occurs in the periphery of the Basin itself. Gunnison sage-grouse habitat use is not restricted to large expanses of sagebrush.

b. Natural and anthropomorphic habitat patchiness (sometimes referred to as fragmentation) is significantly higher in the satellite populations of Gunnison sage-grouse than in the Gunnison Basin or the more widely studied Greater sage-grouse. Individual habitat patch size (whether of sagebrush, mountain shrub, agricultural, or pinyon-juniper) is typically much smaller, therefore increasing landscape diversity, and increasing surface edges. "Clipping" maps to only sagebrush habitat frequently presents a situation where a well could be permitted extremely

close to a lek, and within significant nesting areas, without CPW being consulted. For reasons cited in the original rule making justification, this can lead to abandonment of leks and nesting areas.

The definition of active, inactive, and historic leks has been standardized in the Gunnison Sage-Grouse Rangewide Conservation Plan (GRWP). The definitions start with the Connelly et al. 2000 definitions, and are modified for use in low population areas. An area used by displaying males in the last 5 years is considered an active lek. There are criteria for how many males at a given lek in a given year for a given population constitute active and those are defined in the GRWP. A lek needs to be seasonally inactive for five consecutive years to be deemed inactive. A historic lek is a formerly active lek that has not been utilized for display or breeding within the last 10 years.

6. **Expansion of Bighorn sheep production area RSO and winter range SWH in the Battlement Mesa area.**

A commenter requested information on why the RSO for bighorn sheep production areas and the SWH for bighorn sheep increased in the Battlement Mesa area.

Response:

The area of concern expressed by Encana in its August 23, 2013 letter to COGCC encompasses the Battlement bighorn sheep herd (S-24). This population of bighorn sheep is an indigenous, remnant low elevation herd that has not been hunted since 1979. CPW has been actively and intensively managing this herd since 1986. Extensive planning and collaboration with the USFS, BLM, and conservation organizations (Rocky Mountain Bighorn Society, Wild Sheep Foundation, Rocky Mountain Elk Foundation, Auction and Raffle Program, etc.) has resulted in a number of habitat management projects including prescribed fire, manipulation of habitat in travel management corridors, herbicide treatments to expand forage areas, and water developments on USFS lands in and around this herd. After these habitat treatments were completed, and as part of the management plan for this population of sheep, CPW translocated fourteen bighorn sheep into the existing population in 2005 and 2006. Ten of the translocated sheep, nine adult ewes and one adult ram, were fitted with radio telemetry collars.

The translocation has been successful with documented successful lambing and recruitment of bighorn sheep into the existing population. The telemetry locations and visual observations indicate that, as the Battlement sheep population increases, it is expanding and re-colonizing historic habitat. Most notable is the area around the Jerry Creek Reservoirs and lower Atwell and Shire Gulches. A group of 20-30 sheep consisting of native and translocated sheep is frequently observed in these areas and often travels to more traditional, higher elevation ranges.

Our delineation of RSO and SWH habitat for Bighorn sheep in this area is based upon 1720 telemetry locations and 45 verified visual observations. Additional location data outside the RSO confirm that this population is expanding its size and using all types of historic bighorn sheep habitat. CPW is committed to increased telemetry work on this population of sheep to better understand the seasonal ranges of this expanding herd.

CPW acknowledges that certain areas within the proposed RSO are not typical bighorn sheep production habitat; specifically Place Mesa and similar mesa top habitats. These mesa areas are of substantial value to this herd as winter range due to their proximity to production areas in the canyons, but we acknowledge they more appropriately reflect SWH. An updated map will be provided for the COGCC rules hearing that will remove these mesa tops from the RSO map and include them in the SWH map.

7. Detailed RSO and SWH map definitions.

Several commenters have requested that CPW provide the full definitions used to produce the RSO and SWH maps.

Response:

CPW will make a document available that provides detailed definitions of the RSO and SWH maps.