

**From:** [Jonna Lou Schafer](#)  
**To:** [Mason, Wendy, EMNRD](#)  
**Cc:** [Coy, Gerald Matherly](#); [Vickie Marquardt](#); [Jim Townsend](#); [Rachel Black](#); [Ezzell, Candy S.](#); [Burt, William F.](#); [Pirtle, Cliff R.](#); [Griggs, Ron](#); [Cook, Zachary J.](#); [Heltner, Pamela](#)  
**Subject:** [EXTERNAL] Proposed Rulemaking, Amendments to 19.21.2 NMAC Threatened & Endangered Plants  
**Date:** Wednesday, November 10, 2021 8:48:17 AM  
**Attachments:** [OCCA--NM rule change on endangered plant.docx](#)

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November 10, 2021

Dear Ms. Mason,

Please find attached a letter from the Otero County Cattleman's Association regarding the Proposed Rulemaking, Amendments to 19.21.2 NMAC Threatened & Endangered Plants. I have also pasted the letter into the body of this email for your convenience.

Thank you,  
Jonna Lou Schafer for Gary Stone, President of the Otero County Cattleman's Association

November 10, 2021

Wendy Mason  
EMNRD, Forestry Division  
1220 South Saint Francis Drive  
Santa Fe, New Mexico 87505  
[Wendy.mason@state.nm.us](mailto:Wendy.mason@state.nm.us)

**RE: Proposed Rulemaking, Amendments to 19.21.2 NMAC Threatened & Endangered Plants**

Dear Ms. Mason,

My name is Gary Stone and I am writing on behalf of the Otero County Cattleman's Association (OCCA) regarding the Proposed Rulemaking, Amendments to 19.21.2 NMAC, Threatened and Endangered Plants.

OCCA was just made aware of this proposed rulemaking, less than 24 hours before comments

are due. To our organizations knowledge, there has been no outreach to the agricultural community that manages the vast majority of the lands in New Mexico and to whom this rule is directed upon. There certainly was no outreach to OCCA. In reading the submitted comments on the Forestry Divisions webpage, there appears to be little, if any comment from the numerous tribes and pueblos throughout the state. These rural and lower income populations that will be hardest hit by these rules and they have had absolutely no input or sufficient opportunity to address their concerns. It is imperative that local governments are made aware of proposed policies that have the potential to affect their constituents in order for them to address the issues if they so choose.

At first glance, these are a few irregularities that stand out:

*“19.21.2.7 DEFINITIONS:*

*A. “Agricultural practice” means grazing, ditch clearing or burning, planting, applying herbicides to cultivated fields, harvesting, mowing of hay fields or pastures, burning pastures or fields or cultivating, plowing or disking fields or similar activities and the maintenance, repair or replacement of fences, water tanks and troughs, wells and windmills, pumps or solar panels powering wells, loading chutes, corrals and water pipelines.”*

**Comment: Grazing is mentioned, but not the act of normal day to day, year to year feeding, gathering, and/or herding of livestock. If the “grazing” terminology is to remain as is, then New Mexico, Energy, Minerals and Natural Resources Department (EMNRD), Forestry Division must also define “grazing”. Such definition should include the normal management of livestock, including, but not limited to, feeding, herding, and gathering.**

**The proposed definition also includes “maintenance, repair, or replacement” of certain equipment. Why is “new” infrastructure not included as well?**

**Range management practices are not included within the definition. Range Management and brush control projects are necessary to improve and enhance water conservation, soil**

**health, erosion, watershed function, sustainability and forage for livestock as well as wildlife.**

**Suggested wording for this definition; “any typical agricultural practices, including but not limited to, grazing, livestock management, ditch clearing or burning, planting, applying herbicides to cultivated fields, harvesting, mowing of hay fields or pastures, burning pastures or fields or cultivating, plowing or disking fields or similar activities, erosion control structures, road maintenance, dirt tanks (earthen impoundments), brush control projects, and the construction, maintenance, repair or replacement of fences, water tanks and troughs, wells and windmills, pumps or solar panels powering wells, loading chutes, corrals and water pipelines.”**

*“19.21.2.11 INCIDENTAL TAKE PERMIT*

*C. An incidental take permit application for an endangered plant that is also listed under federal law, must be accompanied by United States department of the interior, fish and wildlife service consultation response and, if required, biological opinion.”*

**Comment: Why is the Fish and Wildlife Service listed as one of the federal agencies that must be contacted before and Incidental Take Permit (ITP) will be issued? The Fish and Wildlife Service only has a small window that possibly permits them to have jurisdiction over private lands. In fact, OCCA believes that constitutionally, neither the states nor the feds have jurisdiction over private property. Section 7(2) of the Endangered Species**

**Act states that, “Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded,.....” It specifically says “Federal agency”. The state has jurisdiction over state lands. Why would one want to invite the Feds into a state matter? State business is State business.**

*“19.21.2.15 PERMIT APPROVAL:”*

**Comment: The proposed rule should include specific timeframes for State Forestry review of ITP applications. Once approved, ITPs should remain in effect for the life of the project. The proposed rule should specify a process for amendments.**

*“19.21.2.19 PENALTIES”*

**Comment: The lack of widespread notification of this proposed rule, which creates and imposes a rule with substantial penalties, is grossly unfair to the affected parties.**

Being that the proposed rule change has not been widely circulated for review, OCCA respectfully asks that EMNRD consider extending the comment period for at least 60 more days in order for OCCA to fully research the issue and to make more thoughtful and informative comments.

OCCA also requests additional public meetings in rural counties for adequate review and opportunity to comment by counties, schools, utility providers, farmers and ranchers.

Thank you for the opportunity to comment and for your consideration of our concerns.

Sincerely,  
Gary Stone  
PO Box 595  
Weed, New Mexico 88354  
(575) 687-3742

cc: Board of Otero County Commissioners  
Representative Jim Townsend  
Representative Rachael Black  
Representative Candy Spence-Ezzell  
Senator Bill Burt  
Senator Cliff Pirtle  
Senator Ron Griggs  
Senator Zachary Cook