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Ron Carl, Esq.
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5334 S. Prince Street
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RE: *Arapahoe County's proposed oil and gas regulations*

Dear Mr. Carl:

I am writing to express the Colorado Oil and Gas Conservation Commission's ("COGCC") concerns regarding Arapahoe County's proposed oil and gas regulations. The COGCC has previously noted its interest in working collaboratively with Arapahoe County to address local oil and gas issues through the COGCC's statewide program.

The COGCC is charged with fostering the responsible development of Colorado's oil and gas resources in a manner consistent with the protection of public health, safety and welfare, including protection of the environment. Responsible development requires uniform regulation. Therefore, the courts recognize that local governments may not pass regulations concerning the technical aspects of development that conflict with COGCC regulations. Unfortunately, many aspects of Arapahoe County's proposed rules conflict with the COGCC's regulations, including:

The County's Proposed Setback Rules

The County's proposed setback rules conflict with state law. Proposed County Rule 12-1910.10, if adopted, would require a minimum setback of 450 feet from the "well site." In contrast, COGCC Rule 603.a provides that "the wellhead shall be located a distance of one hundred fifty (150) feet or one and one-half (1-1/2) times the height of the derrick, whichever is greater, from any building unit, public road, major above ground utility line, or railroad." In high density areas, COGCC Rule 603.e. extends setbacks to 350 feet.

Similarly, proposed County Rule 12-1910.05(C), if adopted, would prohibit "activities associated with oil and gas development" within 500 feet of any water body. However, COGCC Rule 317B provides extensive regulations concerning "Public Water System Protection" and COGCC Rule 324A prohibits operations from degrading air, water, soil or biological resources. Moreover, COGCC Rule 1204(4) requires operators to "establish new

staging, refueling, and chemical storage areas outside of riparian zones and floodplains” and COGCC Rule 1002.e.(2) provides that “operators shall avoid or minimize impacts to wetlands and riparian habitats to the degree practicable.”

The County’s Proposed Permitting Rules

The County’s proposed permitting process conflicts with state law. Under the Oil and Gas Conservation Act, the General Assembly charged the COGCC with the responsibility to implement timely and efficient procedures for the review of applications for permits to drill. C.R.S. § 34-60-106(11)(a)(I)(A). Arapahoe County’s proposed regulations will materially impair the state’s interest in the timely and efficient approval of drilling permits. The County’s proposed permitting process includes the following duplicative or conflicting provisions:

Site Maps The County’s proposed permitting process, if enacted, would require operators to submit a site-map identifying certain improvements within a 1,500 foot radius of the proposed development area or, in the case of water bodies, within a 1 mile radius. COGCC’s permitting process, however, requires operators to submit a site-map identifying certain improvements within a 400 foot radius, except surface water and riparian identification, which must be identified if within a 1,000 foot radius. *Compare* County Rule 12-19703.03(I) *with* COGCC Rule 303.d.(3).

Fencing Plan The County’s proposed rules would require operators to submit a fencing plan. However, the COGCC presently regulates fencing. *Compare* County Rule 12-19703.03(L) *with* COGCC Rule 603.e.(7).

Weed Management and Re-Vegetation Plan The County’s proposed rules would require operators to submit weed management and re-vegetation plans. However, the COGCC presently regulates the management of noxious weeds and imposes requirements for re-vegetation. *Compare* County Rule 12-19703.03(N) & (R) *with* COGCC Rule 603.j. (Statewide equipment, weeds, waste, and trash requirements); COGCC Rule 1002.c. (Protection of Soils); COGCC Rule 1003.e. (Re-vegetation of land); and COGCC Rule 1003.f. (requiring compliance with Colorado Noxious Weed Act, C.R.S. § 35-5.5-115).

Water Quality The County’s proposed Rule 12-1910.05 would require operators to identify all water bodies within a one-mile radius of the proposed development area, conduct a baseline water quality analysis of such sources, describe potential impacts from development and propose mitigation strategies for such potential impacts.

By statute, the COGCC is required to regulate “oil and gas operations so as to prevent and mitigate significant adverse environmental impacts on any air, water, soil, or biological resource resulting from oil and gas operations to the extent necessary to protect public health, safety, and welfare, including protection of the environment and wildlife resources.” C.R.S. § 34-60-106(2)(d). In order to carry out its statutory responsibility, the COGCC has passed numerous regulations for the protection of water. In addition to technical regulations meant to ensure wellbore integrity and proper waste management, COGCC Rule 317B, as stated

above, provides extensive regulations concerning “Public Water System Protection” and COGCC Rule 324A requires that any operation shall not degrade air, water, soil or biological resources.

The COGCC also has an extensive ground and surface water monitoring program. Various COGCC regulations (e.g., Rules 317B, 318, and 608) and orders (e.g., Causes 112-138, 112-156, and 112-157) require operators to collect baseline water samples in certain areas and for certain types of wells; the COGCC can and does add special permit conditions to require such sampling on a well-by-well basis; and the COGCC collects such data itself in response to landowner requests and where oil and gas development moves into new areas. In addition, the COGCC has worked with the oil and gas industry on a new initiative, through which oil and gas operators who drill new wells will collect groundwater samples before and after drilling and hydraulic fracturing. The data will be provided to the COGCC, who will manage it in a central database. Annually, the Colorado Oil and Gas Association and COGCC will prepare a joint report to the Commission summarizing participation and findings.

The County’s Proposed Wildlife Impact Rules

The County’s proposed rule for the protection of wildlife and wildlife habitat, County Rule 12-1910.03, is redundant of or conflicts with state law. In 2007, the General Assembly passed the Colorado Habitat Stewardship Act of 2007. The Act required the COGCC to pass comprehensive rules and regulations to minimize adverse impacts to wildlife resources. As a result of these new rules and regulations, the COGCC consults with the Division of Parks and Wildlife where appropriate. The County’s attempt to impose additional requirements for the protection of wildlife is unnecessary and has the potential to conflict with COGCC requirements.

The County’s Proposed Floodplain Restrictions

The County’s proposed regulations prohibit the location of oil and gas facilities in any floodplain. However, COGCC rules contemplate that facilities may, in some instances, be located within floodplains. *Compare* County Rule 12-1910.08 with COGCC Rule 603.k. (Statewide equipment anchoring requirements. All equipment at drilling and production sites in geological hazard and floodplain areas shall be anchored to the extent necessary to resist flotation, collapse, lateral movement, or subsidence.”) and COGCC Rule 1003.d.(1). (Drilling pit closure on crop land and within 100-year floodplain.).

The County’s Noise Regulation and Special Mitigation Measures

The County’s proposed regulations authorize the Board of County Commissioners to require noise abatement measures as a condition to obtaining a permit. However, the COGCC comprehensively regulates noise from oil and gas operations to the exclusion of county regulation. *Compare* County Rule 121910.09 with COGCC Rule 802 (Noise Abatement). *See also*, C.R.S. § 30-15-401(1)(m)(II)(B) (“Ordinances enacted to regulate noise on public

and private property pursuant to subparagraph (I) of this paragraph (m) shall not apply to ... oil and gas production subject to the provisions of article 60 of title 34, C.R.S.”).

Conclusion

Arapahoe County’s attempt to “go farther” than the COGCC’s regulations by creating different requirements in areas of concern is impermissible because such regulations would necessarily conflict with the COGCC’s regulatory regime. *See e.g., Town of Frederick v. North American Res. Co.*, 60 P.3d 758, 765 (Colo.App. 2002) (striking down conflicting setback, noise abatement, and visual impact provisions as preempted) (attached as **Exhibit A**).

Similarly, a duplicative permit approval process at the county level is impermissible for the reasons set forth above. One of the leading preemption cases summarizes the COGCC’s position succinctly:

There is no question that the efficient and equitable development and production of oil and gas resources within the state requires uniform regulation of the technical aspects of drilling, pumping, plugging, waste prevention, safety precautions, and environmental restoration. Oil and gas production is closely tied to well location, with the result that the need for uniform regulation extends also to the location and spacing of wells.

Bd. of County Com'rs, La Plata County v. Bowen/Edwards Assoc's, Inc., 830 P.2d 1045, 1058 (Colo. 1992) (attached as **Exhibit B**).

Arapahoe County’s proposed regulations either directly conflict with the COGCC’s regulatory regime or impose redundant obligations upon regulated parties. Therefore, the County Commissioners should reject the proposed rules and, instead, work with the COGCC to address local concerns through the State program.

Sincerely,

FOR THE ATTORNEY GENERAL



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cc: David Neslin, Director COGCC