

August 15, 2005

The Oil and Gas Conservation Commission met on August 15th at 9:00 a.m. in the Weld County Department of Planning Services Hearing Room, 918 10th Street, Greeley, Colorado, for a hearing in Cause Nos. 1 (3 matters), 7, 112, 139, and 440.

Those present were:

Peter Mueller	Chair
Brian Cree	Vice Chair
John Ashby	Commissioner
Kimberlee Gerhardt	Commissioner
Mike Klish	Commissioner
Samuel Potter	Commissioner
Tom Reagan	Commissioner
Carol Harmon	Assistant Attorney General
Brian Macke	Director
David Dillon	Deputy Director of Operations
Debbie Baldwin	Environmental Supervisor
Patricia Beaver	Hearings Manager

The Commission approved the minutes from the July 2005 hearing.

Assistant Attorney General's Report: Assistant Attorney General Harmon provided a written report and responded to questions from Commissioner Ashby regarding the Leyden memo and the Consolidated Mutual Water Well.

Director's Report: The monthly statistics report is attached. Based on data available to date, 2,258 Applications for Permits-to-Drill ("APDs") were approved as of August 1, 2005. At that pace, it is estimated that nearly 3900 APDs will be approved in calendar year 2005. This compares to the record high 2,917 APDs approved in 2004, and 2,249 APDs approved in 2003. Nine hundred APDs are predicted to be approved in Weld County this year.

Northwest Colorado: The next meeting of the Northwest Colorado Oil and Gas Forum will be held from 10:00 a.m. until 2:00 p.m. on Thursday, September 8, 2005 in Rifle. The Forum which is co-chaired by COGCC Director Brian Macke and Garfield County Commissioner Larry McCown, consists of representatives from federal, state and local government, the oil and gas industry and all interested citizens. The meetings are currently being held four times during the year. The meeting frequency may be adjusted if changing circumstances create a need to do so.

There has been no change in conditions in the West Divide Creek Gas Seep in the Mamm Creek Gas Field. EnCana continues to monitor a number of sites, many on a monthly basis. URS has been granted approval to conduct the hydrogeological study, with the kickoff meeting set for next week.

Southwest Colorado: The next GORT meeting is scheduled for September 16, 2005.

On June 3, 2005 the third soil gas survey of the ongoing investigation, reclamation and mitigation of explosion in the Bondad, Colorado impacted area was conducted and the report was provided to the Commission. The majority of methane was detected in an elliptically-shaped seep area similar to the seep area mapped in both the February and April 2005 surveys. Now that we have established that the size and shape of the seep area are remaining constant, future surveys will be conducted on a quarterly basis, with the next one scheduled for September 2005.

On July 2, 2005, a caretaker's house associated with the McWilliams residence at 2462 County Road 505 near Bayfield, Colorado burned. On Monday, July 25, 2005, COGCC's consultant, LT Environmental, conducted a soil gas survey of the property and surrounding areas to determine if methane was present in the shallow subsurface. Methane was not detected in any of the over 140

soil gas sampling locations, nor was methane seeps observed in any surface water body. In addition, the Pine River and two ponds in the area were examined for active methane seeps.

Southeast Colorado: The permanent systems for removal of methane seeping from coal seams into the Mondragon and Saint residences were installed by LT Environmental (LTE) the week of July 4, 2005. Additional aesthetic repairs were made at the residences the week of July 25, 2005. Both the Saint and Mondragon residences are connected to the City of Trinidad water supply system and therefore these water wells are not used for drinking water.

LTE conducted an additional survey at the Primero School on July 9, 2005. This survey was conducted to determine if repairs to the propane distribution system made in late June 2005 would eliminate the subsurface gas detected during a previous survey of the school and grounds conducted in April 2005. Based on data obtained during the second field investigation gas is still present in the subsurface. Methane was detected in seven (7) of 39 points measured. Methane concentrations were relatively lower than concentrations measured in April 2005. LTE is scheduled to conduct an additional methane survey in late August to determine if methane concentrations are continuing to decrease or if the methane is persistent indicating an active methane seep.

Staff Organization: We would like to welcome Marc Fine, COGCC's new Information Technology Manager, started with the COGCC on July 18, 2005. He had been working with the Colorado Department of Revenue, managing a large application development group, and brings with him extensive knowledge and experience.

COGCC staff met with Department of Water Resources ("DWR") staff to discuss possible areas of overlap on jurisdictional dams, and determined that it is not necessary to have a Memorandum of Understanding ("MOU") with DWR regarding jurisdiction.

Public Outreach: David Dillon addressed the Mesa County Commissioners and Planning Department on July 13, 2005 in Grand Junction. The purpose of the presentation was to inform Mesa County representatives of COGCC rules and regulations. Commissioner Meis of Mesa County requested an update on the progress of Red Oak Operating's plugging program and also requested the COGCC begin regulating gathering systems.

David Dillon gave a presentation at the Colorado Farm Bureau's meeting in Snowmass on July 26, 2005. The presentation covered the COGCC's organization, Commission bonding rules, and gave special emphasis to our new onsite inspection policy.

Brian Macke and Assistant Attorney General Carol Harmon served on panels to provide presentations and answer questions at the Piceance Basin Natural Gas Educational Forum that was sponsored by the Garfield County Energy Advisory Board and Colorado Mountain College at the Garfield County Fairgrounds in Rifle on Saturday, July 16, 2005.

The COGCC Outstanding Operations Awards were presented at the COGA Natural Gas Strategy Conference on August 2, 2005 to four (4) oil and gas operators. The COGCC Exhibit was on display at the conference.

At the request of the local County Commissioners, Brian Macke provided a presentation on COGCC regulations at a public oil and gas informational forum entitled "Your Rights, Industry Rights" that was held at the 4H center in Ridgeway, Colorado on July 19, 2005.

Onsite Inspection Policy: To date, the COGCC has received a total of twelve (12) requests for onsite inspections with six (6) requests withdrawn under the newly adopted Policy For Onsite Inspections On Lands Where The Surface Owner Did Not Execute a Lease Or Is Not A Party To A Surface Use Agreement which was effective for Applications for Permits-to-Drill ("APD") submitted after February 15, 2005. One (1) onsite inspection was conducted on July 15, 2005. The operator agreed to evaluate alternative well locations to accommodate the landowner. One (1) onsite inspection is scheduled for August 17, 2005. It was determined that a discussion will be held at the September 26,

2005 hearing to discuss including mineral owners who have signed leases to be subject to the Onsite Inspection Policy.

Feedback on COGCC Website: Russ Waring, from DR Horton-Melody Land Assessments, emailed the following: "In my job in land assessments, I use a variety of websites and GIS information on the internet for research. I have found the COGCC system to be comprehensive, and accurate, as well as readily useable. It has my vote for the best Colorado land-related research site on the net. Thanks again for a great website!"

Variances: Approval under Rule 502.b. was granted to XTO Energy for a variance to Order No.112-138 requiring monthly bottom hole pressure tests of the Marie Sheilds GU A-1 and the Huber-Garcia 1-22 Wells. The wells, located in La Plata County, are required to have bottom hole pressures measured each month. The variance allows XTO to measure the bottom hole pressure in the Marie Sheilds GU A-1 Well on an annual basis and to measure the bottom hole pressure in the Huber-Garcia 1-22 Well on a semi-annual basis.

A variance under Rule 502.b. was granted to Williams Production RMT Company for the RMV 13-15 Well located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, Township 6 South, Range 94 West, 6th P.M. and the RWF 342-29 Well, surface location in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, Township 6 South, Range 94 West, 6th P.M., and bottomhole location in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, Township 6 South, Range 94 West, 6th P.M. These wells were drilled in violation of Order Nos. 510-8 and 479-7, which required specific setbacks from the unit boundaries that these wells did not meet. The operator was able to execute settlements with the affected interest owners.

A variance under Rule 502.b. was granted to Petroleum Development Corporation to Rule 1004.a. They are planning to drill wells in Section 31, Township 6 South, Range 96 West and in Section 6, Township 7 South, Range 96 West where it will not be technically feasible to grade, re-contour and reclaim the well pads and access roads to their original condition as required by Rule 1004.a.

Commissioner Comments: Commissioner Reagan believes the Greater Wattenberg Area Rulemaking will take a lot longer than one day. Vice Chair Cree described the composition of the Commission and how the Commission functions. Chair Mueller voiced gratitude to the interested parties that came to share comments and also thanked the COGCC staff for its outreach efforts. Commissioner Potter recognizes the frustration the interested parties have come up against trying to understand the proposed rule and to voice concerns regarding the proposal.

Consent Agenda: Chair Mueller asked if any Commissioners had a conflict of interest with any of the items on the consent agenda. Commissioner Ashby stated that in the past he had an interest in West Padroni Field but he did not believe a conflict exists. A motion was made by Commissioner Ashby and seconded by Commissioner Reagan to approve the consent agenda; the consent agenda was approved unanimously as follows:

Cause No. 7, Docket No. 0507-SP-09, West Padroni Field, Logan County: Request for an order to establish 20-acre drilling and spacing units for certain lands in Townships 9 and 10 North, Ranges 52 and 53 West, 6th P.M., with the permitted well to be located in the NW $\frac{1}{4}$ and SE $\frac{1}{4}$ of each quarter-quarter section no closer than 200 feet from the boundary of the quarter-quarter-quarter section where the well is located, for the production of gas and associated hydrocarbons from the Dakota-O Sand Formation.

Cause No. 440, Docket No. 0508-SP-10, Parachute Field, Garfield County: Request for an order vacating certain 320-acre drilling and spacing units Township 6 South, Ranges 95 West and 96 West, 6th P.M., for the production of gas and associated hydrocarbons from the Mesaverde Formation.

Audience Comments: Gary Meyers, a surface owner with no mineral rights is here today because he received a "flyer" mailed from Windsor, CO that indicated his rights would be affected by the COGCC.

Randy Feuerstein, attorney who represents the Colorado Association of Home Builders, National Association of Industrial & Office Properties, Colorado Association of Realtors, Equinox Group, and the Colorado Corn Growers Association described the revenue received from the agricultural industry in Colorado and is concerned that additional drill sites will result in the loss of land for other uses. He stated that he will suggest amendments to the rule which will take a long time to go through during the hearing.

Roy Wardell, who represents Wardell Ranch, believes more wells are likely as a result of the proposed Rule and he is concerned about how much surface will be used for these wells. He asked if the Commission can require directional drilling. The main issue for him is how many wellsites will be used when 18.4% of the land is used currently. He does not think vertical wells should be allowed outside the current drilling windows and would like to see just one operator per wellsite even if multiple ownership of various formations exists.

Linda Shoenewman, a surface owner, stated that her IRA is her property, she has plans to develop her property and if she cannot develop her property her retirement money will be adversely affected.

Janice Bennett Good, President of the National Association of Royalty Owners, Rocky Mountains, has had numerous members tell her about oil and gas operators who claim directional drilling costs are too high to allow them to drill directionally. She would like to see the actual incremental costs for directional drilling and how they compare to well payout.

Lance Astrella, attorney representing surface owners, believes this is a taking rather than a rulemaking. Hundreds of thousands of dollars will be lost from surface owners. There is a need to decrease the amount of lands used for oil and gas operations. The passage of this rule will increase the value of oil company stock while land values will decrease. With the passage of the proposed rule, the constitutional rights of land owners will be affected. He would like to see energy reports and future prices the companies are predicting. He believes it is economical to drill directionally and that the five spot is no longer needed for drilling. There will be an environmental impact from additional wells and land value will be lost. He stated that this is a great opportunity for the Commission to show the public it has a balanced view.

Bill Brown, Aggregate Industries, is concerned about how much land will be impacted by the proposed rule. He would like notification of drilling to be given to the rock products folks.

Mike Speaker, owns some mineral rights but mostly surface rights and he believes 20 acre density will reduce the ability to farm the land and get annual rent payment from tenants. He suggested that all tank batteries be located on one county road in an area to minimize tank batteries throughout area.

Barbara Bank owns land that her grandfather homesteaded in Deer Trail. The signs along her property say "Do Not Dig" and she is concerned that she cannot camp on her land because of this. She would like Duke Energy off her land which has 160 acres of pipeline on her property.

Robert Frank, a property owner, believes the five wellsites already approved are too many.

Duane Woodard, an attorney representing Southwest Investment Group, stated his group has 4000 acres currently being developed along with other lands for sand and gravel operations and other aggregates. He had really hoped the three oil and gas companies would be here to make an educational presentation. Off channel water storage (gravel pits) is important near the Platte River for approximately 80% of water production. A lot of money would be lost if the subsurface is developed more than is presently allowed. Deference needs to be given to sand and gravel owners.

Joel Shoenewman, stated that he believes 40 acres are enough for drilling, that more wells in irrigated lands will ruin farming operations, and that an increased number of wells may result in contamination of water wells.

Tami Yellico, attorney with the City and County of Broomfield, believes up to 40 additional wells per 160 acres would be allowed without requiring directional drilling. She stated that the City and County of Broomfield has numerous land use requirements, and as owners of both surface and minerals their lands would be affected in land use areas.

Albert Dinner stated his concern about surface disturbance and his belief that a maintenance fee should be provided to surface owners on an ongoing basis.

Jane Evans Cornelius, lives near East Platteville and discussed the disruption and damage she has observed from drilling. She has several directionally drilled wells on her land and there is still too much traffic. She believes the process is dangerous and abusive, and will increase the ability to damage her land. She stated that she spent most of the weekend fighting with an oil company intruding on her land. She believes extraction industries have a bad reputation.

Jeff (last name unknown) asked the Commission to review the value of water storage, sand and gravel and other land uses along with oil and gas operations.

Lloyd Christensen from Nebraska came here today with no education on what is proposed. He owns some mineral rights in Colorado and encourages civil rights to be protected by the Commission.

Bruce Johnson described how selling water rights with more wells reduce land prices due to the calculation of the number of acres available for water use.

The Commission went into Executive session at 12:30 p.m. to discuss litigation matters and came out at 1:15 p.m. No action was taken during the Executive Session.

Cause No. 139, Docket 0504-GA-01, request for an order to amend Order No. 139-43 to allow wells to be drilled within one-half mile of the Austral Oil Hayward #25-95 (R-E) Well in Lot 11 of Section 25, Township 7 South, Range 95 West, 6th P.M. for the production of gas and associated hydrocarbons from the Williams Fork Formation was continued to the January, 2006, hearing.

Cause No. 112, Docket No. 0507-AW-14, request for an order to allow one additional well to be drilled in certain 320-acre drilling and spacing units in Township 32 North, Ranges 6 through 10 West, N.M.P.M., with the permitted wells to be located no closer than 990 feet to the boundary of the unit and no closer than 130 feet to any interior quarter section line, for production from the Fruitland coal seams was continued to the September 2005, hearing.

Cause No. 1R, Docket No. 0508-RM-02, request to amend Rules 100, 215, 303, 308A, 333, and 802 was continued to a special hearing set for September 7, 2005.

Cause No. 1R, Docket No. 0508-RM-01, request to amend Rule 318A. to allow additional wells to be drilled and to establish certain spacing and unit designations from the Cretaceous Age Formations was continued to a special hearing to be determined for either October 10 and 11, November 14 and 15, or November 17 and 18, 2005.

A hearing in Cause No. 1, Docket No. 0508-GA-03; request for an order to allow the discharge of treated production water from the Wellington Muddy Unit into the Boxelder Creek alluvium was held.

The Commission heard testimony from Brad Pomeroy, President of Wellington Operating, regarding the history of the Wellington Field which was discovered in 1923 by Union Oil, the estimate that only eight percent (8%) of the calculated original oil in place has been produced, and that the produced water from the field is highly treatable.

The Commission heard testimony from Richard Seaworth, the surface owner who testified that he was in support of Wellington Operating's project because of the additional water it will provide to an area of the state that needs water.

The Commission heard legal opinions from Steven Bushong, Attorney for Wellington Operating, regarding jurisdictional authority by the WQCD and the COGCC over the proposed plan. He stated that, based on federal law construing EPA's authority, Wellington Operating's position is that the WQCD has jurisdiction over the project and not the COGCC.

The Commission received a copy of a letter dated August 10, 2005 from the attorney for the WQCD (after conferring with the Commission's attorney) setting forth the reasons (a) federal law is not pertinent in construing Colorado's Water Quality Control Act, (b) the Commission has jurisdiction over Phase I of Wellington Operating's project and (c) the WQCD has jurisdiction over Phases II and III. Phase I is a discharge into ground water of water produced from oil and gas operations. Under Senate Bill 89-181, the Commission is the implementing agency charged with regulating that activity and, therefore, Phase I. Phases II and III involve direct discharges of pollutants to surface waters and would be regulated by the WQCD.

The Commission heard expert testimony from David Stewart, PhD, P.E. and President of Stewart Engineering who provided background information on the administration of water rights and the appropriation system in Colorado. Mr. Stewart testified as to Wellington Operating's Production Water Treatment Facility proposal and the intent to use the produced water as a water resource asset. He testified that as nontributary water, Wellington Operating is the only entity that can withdraw the produced water from the field. Mr. Stewart testified that the water is physically separated from any surface water and therefore the proposed project does not injure any existing water users in northern Colorado.

The Commission heard additional testimony from Mr. Stewart who described the proposed project as: First Phase - construct the produced water treatment plant; Second Phase – construct the reverse osmosis drinking water plant with a new tributary well; and Third Phase – create a shrimp farm aquaculture plant. Mr. Stewart testified that the different waste streams would be combined into an infiltration basin, with two (2) waste streams permitted by the WQCD and one (1) waste stream permitted by the COGCC. In addition, he testified as to the water treatment process, the cost for the treatment plant infrastructure, and the amount of water the system will be able to treat.

The Commission heard further testimony from Mr. Stewart who testified about the hydrology of the area, the design of the infiltration basin, flow and quality of treated water, and dissolved substances contained in the treated water and their lack of toxicity. Mr. Stewart testified that the only wells between the infiltration basin and the proposed point of compliance are irrigation wells owned by Mr. Seaworth, and that the cost to remove non-toxic parameters increases the project cost by fifty percent (50%) with no benefit.

The Commission heard testimony from Mr. Stewart regarding establishment of the property boundary as the point of compliance, obtaining a variance for an unlined pit, and the proposed monitoring frequency.

Doug Ryan, Environmental Health Planner for the Larimer County Department of Health and Environment presented a written hearing statement and testified that the point of compliance should be the water treatment facility, that the discharge standard for the treatment system should be in compliance with concentrations established in Table 910-1 of the Commission's Rules and Regulations, and that continuous monitoring should occur at the water treatment facility.

The Commission heard testimony from Debbie Baldwin, Environmental Supervisor for the Commission regarding concerns of the COGCC staff with Wellington Operating's proposal, the likelihood of similar future proposals, the potential need for COGCC rules to address these types of proposals, and the need to establish bonding requirements. The COGCC staff believes that the proposed project is in an area where there is an aquifer that would be recharged by percolation of produced water from an unlined pit and therefore would be considered a sensitive area. Ms. Baldwin presented COGCC staff recommendations for the establishment of points of compliance and other monitoring wells related to Wellington Operating's proposal. She testified regarding the need for Wellington Operating to provide additional data to demonstrate the range in produced water quality and the quality of the ground water

in the alluvium of Boxelder Creek, and to define more precisely the site specific aquifer characteristics including flow rate and mixing. Ms. Baldwin testified regarding the need to have Wellington Operating test, on a regular and agreed to schedule, downgradient water wells, including irrigation wells for major anions and cations, BTEX, and other parameters of concern, and prepare a plan addressing operation and maintenance, response to upset conditions and breakdowns, effluent monitoring, and long term pit maintenance. She testified that the differences in the chemistry of the produced water, which is primarily sodium-chloride-sulfate type water and the water in the alluvium of Boxelder Creek which is primarily calcium-sulfate-bicarbonate type water, and the potential impacts to soil and plants from irrigation with water having higher sodium concentrations.

Michael Liuzzi, Environmental Protection Specialist, Permits Unit, for the WQCD stated at the hearing that he has worked with Stewart Engineering regarding Wellington Operating's proposal and he is comfortable with the proposal.

Based on the facts stated in the verified application and the testimony and exhibits presented at the hearing, the Commission finds that including the amount of financial assurance to be provided, identification of the responsible party(ies), establishment of points of compliance (POC) closer to the infiltration pit than the property boundary, installation of additional monitoring wells spaced at regular intervals across the paleo-channel of Boxelder Creek and between the POC and the infiltration pit, establishment of type, monitoring frequency and location of each monitoring well, preparation of a contingency plan, and establishment of a process for immediate notification of COGCC and WQCD staffs if an upset occurs, monitoring of irrigation wells, along with any other conditions COGCC staff, in consultation with WQCD, believes are appropriate. A motion was made by Commissioner Potter, seconded by Commissioner Reagan and approved unanimously.

Wellington Operating Company, LLC agreed to be bound by the Commission's jurisdiction and by oral order of the Commission.

The COGCC staff should provide an update to the Commission on the status of its approval process for Wellington Operating's variance at the September 7, 2005 Commission hearing.

The Hearing adjourned at 4:25 p.m.

The Secretary was therefore authorized to issue the following orders:

Order Nos. 440-29 & 479-16, Parachute Field, Garfield County: Approves the request that certain lands in Township 6 South, Range 95 West, 6th P. M., and Township 6 South, Range 96 West, 6th P.M. be vacated from the 320-acre drilling and spacing units established in Order No. 440-12 and Order No. 479-1 and the lands be placed under the provisions of the Rules and Regulations of the Colorado Oil and Gas Conservation Commission.

Order No. 7-3, West Padroni Field, Logan County: Approves the request that 20-acre drilling and spacing units be established for certain lands in Townships 9 and 10 North, Ranges 52 and 53 West, 6th P.M., with the permitted well to be located in the NW $\frac{1}{4}$ and SE $\frac{1}{4}$ of each quarter quarter section no closer than 200 feet from the boundary of the quarter quarter section, where the well is located, for production of oil, gas and associated hydrocarbons from the Dakota O-Sand Formation.

Order No. 1-108, Boxelder Creek Alluvium, Larimer County: Approves the request to allow the COGCC staff to approve Wellington Operating's variance request which will allow discharge of treated produced water from the Wellington Muddy Unit into the Boxelder Creek alluvium, and to impose various conditions of approval.

Patricia C. Beaver, Secretary

Approved:

Peter M. Mueller, Chair