

## RECORD OF PROCEEDINGS

October 21, 2010

The Oil and Gas Conservation Commission (“COGCC”) met at 9:00 a.m., on October 21, 2010, West Garfield Campus, Colorado Mountain College, 3695 Airport Road, Rifle, Colorado, 81650.

### Roll Call of Commissioners

Present:

Joshua Epel	Chair
Michael P. Dowling	Vice Chair
Richard D. Alward	Commissioner
Deann Craig	Commissioner
Mark Cutright	Commissioner
Tom Compton	Commissioner
Mike King	Commissioner
Tresi Houpt	Commissioner
Matt Lepore	Assistant Attorney General
David Neslin	Director
Carol Harmon	Hearings Manager

Absent:

Martha Rudolph	Commissioner
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### Approval of Proceedings

Consideration of minutes was deferred until after lunch so the Commissioners would have time to review them. (The Minutes were not available prior to the meeting.)

Vice Chair Dowling moved for the approval of the minutes of the September 16, 2010, February 22, 2010, and March 25, 2010 hearings as presented. The motion was seconded by Commissioner Alward and approved unanimously.

### DNR Executive Director’s Report

Commissioner King reported on the following matters on behalf of the Department of Natural Resources (DNR):

- A new program is about to be inaugurated on October 22, 2010 for Colorado Kids in the Outdoors. It is designed to dovetail with the national program, No Child Left Inside. It targets junior and senior high school students, and is intended to improve and increase greater awareness of environmental and natural resources education.
- Colorado River Access Task Force has met twice. It continues to look for negotiated, compromise solutions, as opposed to wanting to seek resolution of river access issues through a Colorado Supreme Court decision. The task force is seeking river basin by river basin solutions along the lines of the water resources roundtables, instead of a single statewide solution.

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- Commissioner King joined U.S. Undersecretary of Agriculture for Natural Resources, Harris Sherman, on a tour that involved a tour of a mill and forest on the Uncompahgre Plateau that has suffered heavily from Mountain Pine Beetle.
- DNR is in litigation over the rules on produced water from coal bed methane development promulgated by the State Engineer's Office. The primary issue is whether the Water Court considers determinations made by the Division of Water Resources in such matters, *de novo*, or whether such determinations are given a rebuttable presumption of validity. Briefs in the matter are scheduled for early November.

### **Director's Report**

Director Neslin reported the following:

- The Northwest Colorado Oil and Gas Forum (Forum) is an informal gathering of local, state, and federal government officials, oil and gas industry representatives, and citizens that have met regularly since 1989. The purpose of the Forum is to share information about oil and gas development in northwest Colorado and to make government officials and oil and gas industry representatives easily accessible to the public. The next meeting is scheduled for December 2, 2010.
- East Mamm Creek Area Investigation - COGCC staff have initiated a project to evaluate existing data and review past and present drilling and completion practices in the East Mamm Creek area of Garfield County. Staff and their consultants will review current COGCC policies and procedures, and develop recommendations to improve future drilling, completion, monitoring, and, where necessary, remedial actions, such that groundwater and surface water resources are protected from natural gas exploration and production activities.
- The next GORT/Southwest Colorado Oil and Gas Stakeholders meeting is scheduled for January 20, 2011 at 8:30 am at the La Plata County Fairgrounds in Durango, Colorado.
- Ongoing Investigation, Reclamation, and Mitigation of Residual Methane in the Vicinity of the Bryce 1-X Well Area, Bondad, Colorado - The North well was resampled by Four Corners Geoscience, contracted to the COGCC on August 25, 2010, to evaluate increases in total dissolved solids and chloride. Results and follow-on actions are pending. The August results indicate both TDS and chloride concentrations decreased between the June and August sampling dates to levels comparable with late 2006. The next full-scale sampling is scheduled for December 2010.
- Baseline Water Quality Sampling – Montezuma & Dolores Counties - COGCC staff have initiated actions to perform baseline water quality sampling of surface and groundwater in areas where additional development of the Gothic Shale play in Montezuma and Dolores Counties may occur. Raven Mesa Geoscience, on behalf of the COGCC, is compiling data regarding locations and ownership of permitted domestic water wells and springs in the area to assist in scoping the project.
- Baseline Water Quality Sampling – Rio Grande County - Dan A. Hughes Oil Company has initiated a baseline water quality sampling program in advance of its proposed drilling activities in the Del Norte area of the San Luis Valley. Its consultant has conferred with Karen Spray of the COGCC regarding proposed

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sample parameters and is conducting the field sampling activities. Results will be made available to the COGCC for inclusion in the water quality database upon completion.

- Operators within the Wattenberg Bradenhead Test Area approved by the Commission on December 16, 2009, began testing on January 15, 2010. There are 2,386 wells with short surface casing in the test area. Operators have reported to the COGCC on 1,572 wells (66%) with 101 (6%) of the tested wells having bradenhead pressures greater than the pressure gradient map. The 101 wells are currently under review and are being monitored.
- Baseline Water Quality Sampling – Weld County - COGCC staff have initiated discussions with a number of operators regarding a surface and ground water sampling program in northern Weld County in areas where the Director has approved drilling permits for horizontal wells in the Niobrara Formation in un-spaced areas and where the Commission has issued recent spacing orders for horizontal wells in the Niobrara Formation. These sampling efforts will supplement previous work by COGCC staff to establish baseline water quality in advance of further development of oil and gas resources in that area. Sampling will continue during the long term development of the resource and the results will be used to help determine whether impacts from oil and gas operations have occurred.
- Methane Investigation Monitoring, and Mitigation Plan (MIMMP) - Three monitoring wells, 4 recovery, and 8 injection wells have been drilled, completed and tested by Petroglyph Energy Inc. (PEI) as part of Phase 1 of the MIMMP. Operation of the Phase 1 pump, treatment, and injection system started on December 8, 2008. More than 22 million gallons of Poison Canyon Formation water had been pumped to the surface and treated as of September 15, 2010. Phase 2 operations started on August 6, 2010. As part of Phase 2, approximately 1.5 million gallons of Vermejo Formation water have been pumped from the Rohr 04-10 Well. The Vermejo Formation water is mixed with Poison Canyon Formation water, sent through a vertical separator and then treated in a reverse osmosis system to ensure compliance with U.S. Environmental Protection Agency and COGCC conditions of approval for Phase 2 operations. Approximately 7.5% of the water treated in the reverse osmosis system is brine that has been transported off-site for disposal at a commercial facility. Gas flows are monitored at 4 domestic wells by PEI or its consultant and at 2 domestic wells by COGCC and its consultant. Overall gas flow has decreased in all monitored domestic wells.
- Public outreach activities:
  - On September 11, 2010, Carol Harmon participated in a presentation to the National Association of Royalty Owners (NARO) about new Forms 37 and 38 which were developed to facilitate the process for royalty owners to request information from payors and to apply for a Commission hearing. NARO members were relatively unfamiliar with the new forms and appreciated the information.
  - Director Neslin and COGCC staff participated in a public meeting at Windsor High School in Windsor, CO on September 21, 2010. The meeting concerned Synergy Resources Corporation's proposed drilling operations south of

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Peakview Estates in Windsor. COGCC provided information on oil and gas activity statewide and in Weld County and provided information on environmental protection during drilling, well completion and stimulation.

- On October 1, 2010, Dave Andrews (West Region Engineering Supervisor), Chuck Browning (Northwest Region Field Inspector) and Linda Spry O'Rourke (Northwest Region Environmental Protection Specialist), made a presentation to the Gunnison County Planning Commission. The presentation included a summary of the COGCC organization, statistics for and primary functions of each group, a summary of select rules pertaining to protection of public health, safety and the environment, an overview of gas well construction and fracing and opportunities for county input on APDs.
- On October 12, 2010, Peter Gintautas presented a discussion of coalbed methane (CBM) produced water quality at the fall Colorado Hazardous Waste Management Society workshop. His presentation focused on CBM produced water quality as well as on gas and water production quantity differences between San Juan and Raton Basin fields.
- COGIS Projects, Updates and Changes to Electronic Form Submissions (eForm)- With the introduction of the Drilling Completion Report (Form 5) and the Completed Interval Report (Form 5A), the number of electronically submitted documents continues to grow. The next form scheduled to be released in eForm is Well Abandonment, Form 6. Last month a meeting was held with a group of operators to begin discussions on the design and usage of eForm and Sundry notices.
- Variances
  - An Oil and Gas Location Assessment Form 2A for a location in Section 31, Township 7 North, Range 63 West in Weld County, was approved for Great Western Oil and Gas Co. LLC. under 303.I. Great Western wanted to move the location of the Heinze 31-14 (API# 05-123-29745) to the Heinze 31-24 pad because the approved location for the Heinze 31-14 was inaccessible due to flooding.
  - An Oil and Gas Location Assessment Form 2A was approved for Mineral Resources, Inc. under 303.I. Due to pending expiration of mineral leases, Mineral Resources had to expedite their drilling schedule of viable leases in Section 32, Township 6 North, Range 65 West in Weld County.
  - Bonanza Creek Energy Operating Company, LLC was granted a variance under 303.I.(2) with permits issued before the expiration of the 20-day consultation period due to exigent circumstances resulting in significant economic hardship. The landowner requested that 3 previously approved Applications for Permit-To-Drill (APDs) for vertical wells be replaced by 3 directional permits to be drilled from one location.
  - Bonanza Creek Energy Operating Company LLC was granted a variance under 303.I.(2) with permits issued before the expiration of the 20-day consultation period due to exigent circumstances resulting in significant economic hardship. The landowner requested that existing vertical wells be twinned by 2 wells previously permitted as vertical wells, for the purpose of moving the wells and tank batteries out of crop circles.

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- A 502.b. variance to Rule 318A. was granted to Prospect Energy LLC on October 5, 2010 for recompletion of a well in the Niobrara Formation. The productive interval of the well is located less than 460 feet (308 feet) from the unit boundary line. Prospect Energy requested waivers from 55 mineral owners, received 18 signed waivers at the time of the request, 3 returns, and no written or verbal protests.
- Thom Kerr explained tables depicted on pages 14-23 of the Staff Report.
- EPA continues to scope out its national study on impacts of fracing. The scoping plan is expected to be completed by the end of 2010. The study is expected to be completed in two years.
- 2010 Third Quarter Activity Report
  - Despite low natural gas prices and decreased economic activity, Colorado's oil and gas industry continues to fare better than that in many other states, including our closest neighbors, in terms of drilling permits issued, new wells started, and drilling rigs active.
  - With respect to drilling permits, Colorado remains the regional leader and among the national leaders:
    - Colorado has issued 4,714 drilling permits through September 30, 2010.
    - In comparison, Wyoming has issued 4,274 permits, Kansas has issued 3,420 permits, New Mexico has issued 1,665 permits, Utah has issued 907 permits, and Montana has issued 292 permits.
    - At this pace, Colorado would issue approximately 6,300 permits this year. This would make 2010 one of the three busiest years for permitting in the state's history notwithstanding the market and economic constraints. Indeed, Colorado has issued almost as many permits as Pennsylvania (4,918), which is currently experiencing a boom in drilling related to the Marcellus Shale.
  - With respect to well starts, Colorado likewise remains the regional leader:
    - Through October 5, 2010, 1,442 new wells have been started in Colorado according to the private industry tracking firm, Anderson Reports.
    - The comparable numbers for nearby states are Wyoming 882, Utah 568, New Mexico 145 in the San Juan Basin (Anderson does not provide information for the entire state), and Montana 95.
    - At this pace, Colorado would have more than 1,900 new wells started this year. Notably, Colorado has more new well starts than North Dakota (963), which is currently experiencing a boom in drilling related to the Bakken Shale.
  - With respect to the increase in active drilling rigs, Colorado likewise remains the regional leader:
    - According to Baker Hughes, Colorado had an average of 40 drilling rigs active during December 2009. By September 2010, this number had grown to 68, reflecting an increase of 28 rigs or 70%.
    - In comparison, New Mexico went from 49 to 69 rigs for an increase of 20, Utah went from 17 to 28 for an increase of 11, Kansas went from 19 to 23

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- for an increase of 4, Wyoming went from 40 to 43 for an increase of 3, and Montana remained at 7.
- Interestingly, Colorado's increase equals that of Pennsylvania, which has likewise had an increase of 28 rigs.
  - o Despite this workload, the COGCC is continuing to maintain faster permitting times:
    - Our current permitting times, from application receipt to permit issuance, continue to average about 21 days in southern and eastern Colorado, about 30 days in northern Colorado, and about 40 days in western Colorado.
    - For example, during September the COGCC issued a total of 437 permits, and the average processing time statewide was about 38 days. As previously reported, it now takes less time to get a permit in Colorado than in Utah and about the same amount of time as in Pennsylvania. Although certain other states issue permits even faster, this does not appear to be impeding industry activity in Colorado.
  - o Also, as previously reported, the COGCC is continuing to increase protections for the environment and wildlife under the amended rules:
    - Specific areas of improvement include increased use of closed loop drilling systems and lined pits to protect ground water, improved storm water management to protect surface water, and various measures to protect nearby residents and wildlife.
    - To date, 10 companies have developed wildlife mitigation plans or similar measures in collaboration with the CDOW covering approximately 560 square miles of high value habitat in western Colorado. These plans allow for the drilling of hundreds of future wells while protecting sage grouse, cutthroat trout, elk, and other wildlife.
  - o The above statistics indicate that energy development and environmental protection are mutually compatible and that oil and gas companies are actively pursuing their opportunities here notwithstanding our updated environmental requirements. Indeed, many other oil and gas producing states, including Wyoming, New Mexico, Pennsylvania, Ohio, Oklahoma, and Arkansas, have likewise updated or are in the process of updating their environmental requirements.

### **Staff Presentation – East Mamm Creek Area Investigation**

COGCC Staffers, Linda Spry O'Rourke and Kevin King explained an ongoing study in the Mamm Creek area of Garfield County considering impacts of oil and gas operations on local shallow ground water and water wells. Domestic water wells at two locations about two miles apart, were reported as having natural gas contamination. These wells are located in an area of oil and gas operations. Garfield County, EPA and COGCC, all have investigators working on assessing sources of drinking water contamination in wells identified as the Bracken Well, Moon Well and the Miller Well. Efforts include reviewing timelines, analyzing compositional and isotopic gas data, evaluating gas well construction and mechanical integrity testing, reviewing water well sample data, and reviewing published geologic data, and where necessary, evaluation of remedial actions, to protect groundwater and surface water resources from natural gas exploration and production activities.

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### **Commissioner Comments**

Chair Epel asked Director Neslin to report on several conferences and meetings that Director Neslin had recently attended.

Extended Director's report: Director Neslin reported that he had attended a meeting of the Ground Water Protection Council in Pittsburgh, PA. and a second conference in Toronto, Ontario. He observed that at both meetings, the State of Colorado was seen as a national leader in developing appropriate responses to the balanced regulation of oil and gas activities.

### **Audience Comments**

Nineteen members of the audience addressed the Commission about their environmental, health, safety, welfare and wildlife concerns associated with increased oil and gas operations in general. Many also specifically expressed concerns about the Antero Resources Piceance Corporation application for 10-acre well density in the Mamm Creek Field, Garfield County, and their opposition to the Antero application, Cause No. 191, Docket No. 1010-SP-37.

Members addressing the Commission included:

1) Ed Colby, Peach Valley; 2) Doug Saxton, Battlement Mesa; 3) Bob Arrington; 4) Tara Meixsell, New Castle; 5) Beth Strudley, Silt Mesa; 6) Lisa Wuerker, Glenwood Springs; 7) Janean Nutter; 8) Fiona Lloyd, Silt Mesa; 9) Dave Devanney, Battlement Mesa; 10) Ron Galterio, Grand Valley Citizen's Alliance; 11) Leslie Robinson, Rifle; 12) Joyce Wiyer, Rifle; 13) Sandy Pickard, Silt Mesa; 14) Bob Rugulski; 15) Christina Kakayannis; 16) Laura Amos, Colbran; 17) Jay Mueller; 18) Mark Gubkin, Grand Junction; and 19) Deb Nicholson, Silt Mesa.

### **Consent Agenda**

Before addressing the Consent Agenda, Chair Epel asked Director Neslin to explain the consequences of spacing orders and at what time in the process environmental considerations are factored into regulatory decisions. Director Neslin explained that spacing decisions are driven by technical geologic and engineering factors, as to what area is drained by a single well. A spacing order does not result in a vested right to any specific number of wells, nor to the location of any wells. Those factors are considered at the time that an Application for Permit-to-Drill (APD) and an Oil and Gas Location Assessment, along with the environmental impacts of the proposed drilling activity. Notices of these applications are given to the Local Governmental Designee, the surface owner, and owners within 500 feet of a proposed well, along with notice to the Colorado Department of Public Health and Environment, and the Colorado Division of Wildlife. Furthermore, 10-acre downhole density, does not translate into wells and well pads drilled at 10-acre density, as often numerous wells are drilled from a single pad. Comments on these applications are considered as potential specific conditions of approval attached to the permit.

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Chair Epel asked if any Commissioners had a conflict of interest with any of the items on the Consent Agenda. Commissioner Cutright disclosed that his company has a professional relationship with Petroleum Development Corporation, EOG Resources, Inc., Great Western Oil and Gas Company LLC, Noble Energy, and Anadarko, none of which would interfere with his ability to fairly consider the matters. He requested that Cause No. 318, Docket No. 1009-SP-25, Augustus Energy Partners, LLC, be pulled from the Consent Agenda for separate consideration. Commissioner Houpt disclosed that in her role as a Garfield County Commissioner, she had considered a complaint initiated by Bob Rugalski concerning one of the operators with a matter on the Consent Agenda, but that it would not affect her ability to fairly consider the matters on the Consent Agenda.

The following matters were pulled from the Consent Agenda:

Cause No. 318, Docket No. 1009-SP-25, Augustus Energy Partners, LLC  
Cause No. 421, Docket No. 1010-SP-28, EOG Resources, Inc.  
Cause No. 191, Docket No. 1010-SP-37, Antero Resources Piceance Corporation

Commissioner Houpt inquired as to whether Cause No. 510, Docket No. 1010-SP-39, Williams Production RMT Company, was located within the Battlement Mesa PUD. Attorney for Williams Production, Williams A. Keefe, responded that it was outside the Battlement Mesa PUD, so the application remained on the Consent Agenda.

William Keefe, attorney for Antero Resources Piceance Corporation, requested that if Cause No. 191, Docket No. 1010-SP-37, was being pulled off the Consent Agenda, he was unprepared to proceed with his case later in the day, and requested that the matter be continued to the Commission's November meeting.

Vice Chair Dowling moved for the approval of the Consent Agenda as follows:

- Cause No. 527, Docket No. 1009-SP-26, Sulphur Creek Field, Rio Blanco County, Applicant: Williams Production RMT Company: Request to establish a 160-acre drilling and spacing unit consisting of the NE¼ of Section 16, Township 3 South, Range 97 West, 6th P.M.
- Cause No. 527, Docket No. 1009-UP-54, Sulphur Creek Field, Rio Blanco County, Applicant: Williams Production RMT Company: Request to pool all nonconsenting interests in the proposed approximate 160-acre drilling and spacing unit consisting of the NE¼ of Section 16, Township 3 South, Range 97 West, 6<sup>th</sup> P.M.
- Cause No. 10, Docket No. 1010-SP-29, Keota Field, Weld County, Applicant: Continental Resources, Inc.: Request to establish two approximate 640-acre drilling and spacing units consisting of Sections 5 and 8, Township 9 North, Range 61 West, 6th P.M., for the drilling of one exploratory horizontal well in each unit, with the lateral in the Niobrara Formation not closer than 600 feet from the unit boundaries or 300 feet from any other wellbore that has penetrated the Niobrara Formation.
- Cause No. 10, Docket No. 1010-SP-30, Keota Field, Weld County, Applicant: Continental Resources, Inc.: Request to establish an approximate 1,280-acre drilling and spacing unit consisting of Sections 4 and 9, Township 9 North, Range 61 West, 6th P.M., for the drilling of one

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exploratory horizontal well, with the lateral within the Niobrara Formation not closer than 600 feet from the unit boundaries and not closer than 300 feet from any other wellbore that has penetrated the Niobrara Formation.

- Cause No. 407, Docket No. 1010-SP-38, Unamed Field, Weld County, Applicant: Petroleum Development Corporation: Request to amend Order No. 407-374 by establishing an approximate 640-acre drilling and spacing unit consisting of Section 14, Township 6 North, Range 61 West, 6th P.M., for the production of oil and gas and associated hydrocarbons from the Niobrara Formation, and allow up to two optional horizontal wells in such unit, with the initial penetration lateral leg and bottomhole location not closer than 460 feet from the boundaries of the unit.
- Cause No. 510, Docket No. 1010-SP-39, Grand Valley Field, Garfield County, Applicant: Williams Production RMT Company: Request to establish an approximate 160-acre exploratory drilling and spacing unit consisting of the W $\frac{1}{2}$  E $\frac{1}{2}$  of Section 32, Township 7 South, Range 96 West, 6th P.M., for the drilling of a vertical exploratory well to test the Mancos, Niobrara, Frontier, and Dakota/Cedar Mountain Formations ("Deep Formations"), and allow the optional drilling of a horizontal well within the unit into one or more of the Deep Formations, with the vertical well and the lateral of the horizontal well not closer than 600 feet from the boundary of the unit, and the lateral of the horizontal well not closer than 300 feet from the wellbore of the vertical well.
- Cause No. 407, Docket No. 1010-UP-55, Wattenberg Field, Weld County, Applicant: Great Western Oil and Gas Company LLC: Request to establish an 80-acre drilling and spacing unit consisting of the E $\frac{1}{2}$  SW $\frac{1}{4}$  of Section 31, Township 7 North, Range 63 West, 6th P.M., to accommodate the Heinze 31-23 Well located in the NE $\frac{1}{4}$  SW $\frac{1}{4}$  (API # 05-123-29758), and the Heinze 31-24 Well located in the SE $\frac{1}{4}$  SW $\frac{1}{4}$  (API # 05-123-29759), and to pool all nonconsenting interests in said unit, for the development and operation of the Codell and Niobrara Formations.

Commissioner Compton seconded the motion, which was approved unanimously.

### Docket No.1010-SP-28

Commissioner Cutright asked the representatives of EOG Resources to explain why the 640-acre spacing was appropriate for the remaining 83 sections included within the application lands. EOG Attorney, Mike Wozniak, explained that smaller spacing does not work efficiently and effectively for the horizontal wells proposed in the application. The applicant has drilled 20 horizontal wells already, and has used the data collected from that activity to support the 640-acre spacing request. Mr. Wozniak stated that most of the leases in the area are large, and are located on large ranches where the minerals are generally owned by the surface owner. This matter was subject to an administrative hearing where all COGCC staff disciplines were present and had an opportunity to question the Applicant on technical details. Commissioner Cutright expressed a preference for the Commission hearing matters of this magnitude.

Commissioner Houpt moved for the approval of the following matter:

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- Cause No. 421, Docket No. 1010-SP-28, Hereford Field, Weld County, Applicant: EOG Resources, Inc.: Request to establish eighty-three approximate 640-acre drilling and spacing units consisting of various lands in Township 12 North, Range 61 West, 6th P.M., Townships 10, 11 and 12 North, Ranges 62 and 63 West, 6th P.M., Townships 11 and 12, Range 64 West, 6th P.M., and allow one horizontal well per said unit.

The motion was seconded by Commissioner Alward, and approved unanimously.

### Docket No. 1009-SP-25

Vice Chair Dowling moved for the approval of the following matter:

- Cause No. 318, Docket No. 1009-SP-25, Republican Field, Yuma County, Applicant: Augustus Energy Partners, LLC: Request to vacate an existing 160-acre drilling and spacing unit and establish two approximate 80-acre laydown drilling and spacing units consisting of the N $\frac{1}{2}$  NE $\frac{1}{4}$  of Section 18 and the S $\frac{1}{2}$  NE $\frac{1}{4}$  of Section 18, Township, 1 North, Range 44 West, 6th P.M.

Commissioner Houpt seconded the motion, which was approved unanimously, by the participating Commissioners (Commissioner Cutright abstained).

### Docket No. 1010-SP-37

The following matter was continued for hearing at the Commission meeting in November:

Cause No. 191, Docket No. 1010-SP-37, Mamm Creek Field, Garfield County, Applicant: Antero Resources Piceance Corporation: Request to establish an approximate 640-acre drilling and spacing unit consisting of Section 31, Township 5 South, Range 91 West, 6th P.M., for the production of gas and associated hydrocarbons from the Williams Fork and Iles Formations, and to optionally allow one well per 10 acres.

### Lunch/Executive Session

Assistant Attorney General, Matt Lapore, explained the basis for the Commission entering into Executive session. The purpose of the Executive Session, pursuant to C.R.S. §24-6-402(3)(a)(II), was to discuss matters with the attorney representing the Commission, concerning matters that are subject to pending or imminent court action, concerning specific claims or grievances, or to receive legal advice on specific legal questions. The specific legal matters to be considered in this proposed session were as follows:

- Colorado Oil & Gas Association v. COGCC
- Chase/Sutak (Moqui Meadows) v. COGCC (2 cases)
- Gas Development Corporation v. COGCC

A motion was made to enter into Executive Session by Commissioner Compton, seconded by Commissioner Craig and approved unanimously.

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[The Commission broke for lunch at 1:00 p.m.]

After a lunch recess, a motion was made to exit the Executive Session and to reconvene the public session. The motion was seconded and approved unanimously.

After returning from Executive Session, Chair Epel reported that due to technical problems, the Commission did not conduct an Executive Session, and no action had been taken during the Executive Session.

### **Hearing Matters**

#### **Cause No. 1, Docket No. 1010-GA-16**

David Foy, Washington County Commissioner, appeared to explain Washington County's application for relief from Rule 804 for all lands within its boundaries. He stated the reasons as follows:

- a. Oil and gas production facilities are not located where they will distract drivers on public highways.
- b. The county is not densely populated, so aesthetics of the tanks and other production facilities are not a concern.
- c. The Board of County Commissioners of Washington County, has taken an official position in support of this request by its adoption of Resolution 57-2010.
- d. The ad valorem taxes collected from the operators of producing oil and gas wells are an important source of revenue for Washington County. The County Commissioners believe that Rule 804 would force most operators to incur additional operating expenses by repainting all or most of their equipment to a uniform tan color, could result in premature plugging and abandonment of economically marginal producing wells.

Commissioner Alward moved for the approval of the application for Cause No. 1, Docket No. 1010-GA-16, Washington County. The motion was seconded by Commissioner Houpt. The motion passed unanimously.

#### **Cause No. 1, Docket No. 1010-GA-17**

Kit Carson County Attorney, Wade Gateley, appeared on behalf for Kit Carson County to explain the basis of the County's request. He stated that the basis of the application was as follows:

- a. Oil and gas production facilities are not located where they will distract drivers on public highways.
- b. The County, particularly in those areas where the affected oil and gas facilities are located, is not densely populated. So, aesthetics of the tanks and other production facilities are not a significant concern.
- c. The facilities are remotely located on dirt roads, which have very little traffic,

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and thus there is very little visual impact.

Upon questioning by Commissioner Houpt, Mr. Gateley stated that a requirement for maintenance painting would not be a problem, as long as some flexibility was maintained for the fact that galvanized steel is difficult to paint.

Commissioner Alward moved for the approval of the application for Cause No. 1, Docket No. 1010-GA-17, Kit Carson County. The motion was seconded by Commissioner Houpt. The motion passed unanimously.

### Cause No. 1 Docket No. 1010-GA-18

Hearings Manager, Carol Harmon, reported that she had received a request from Yuma County to continue the hearing on its application in this matter to the November meeting of the Commission. The continuance was granted.

### Cause No. 191, Docket No. 1009-SP-27

Chair Epel asked the parties to provide a factual summary before beginning their oral argument on the standing issue to be decided at this time. Cynthia L. Bargell, attorney for Gene R. and Mary J. Hilton, stated that in 2005, 29,000 acres in which her clients had a mineral interest were spaced at 640 acres. Subsequently, a single well was drilled on their property, the only well on the entire spacing unit. Their mineral lease authorized pooling of not less than 40 acres. Subsequently, the well density in the 640-acre drilling and spacing unit was increased to allow one well per 10 acres, in a proceeding in which they received no notice. A subsequent lessee of theirs applied for forced pooling, and they protested the application. That case is being continued until this matter is decided. They subsequently made application to vacate the previous spacing order, so that their royal interest would not be diluted from 10% to 1.25%. The question is whether as a royalty interest holder, they have standing to make the application to vacate the prior spacing order. William Keefe, attorney for Bill Barrett Corporation and Williams Production RMT Company, added that the Hiltons have received full royalty payments all along.

The parties then proceeded with oral argument on whether the Hiltons, as a royalty interest holder and without a working mineral interest, have standing to request a vacation of a spacing order. Ms. Bargell argued that C.R.S. 34-60-116 provides standing to make an application to any "interested party" and that Rule 503(b)(10) should be construed as authorizing the Hiltons to have standing. Mr. Keefe argued that Commission Rule 503.b.(1) limits standing to mineral "owners," and that is defined as those with a working interest in the minerals.

After extended debate and Commissioner discussion, Commissioner King moved that the Hilton application be dismissed for lack of standing by the applicants. The motion was seconded by Vice Chair Dowling, and approved 7-1 with Commissioner Houpt voting in opposition.

### Cause No. 371, Docket No. 1010-SP-32 through Docket No 1010-SP-36

These five applications were filed by Axia Energy and protested by Laura J. Amos and Larry L. Amos. The Amoses have unleased minerals within the Application Lands of Docket No. 1010-SP-32, but no mineral interest in any of the other four cases. The basis of the protest was: 1) concern that 10-acre density would increase possibilities for

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emergencies and increase pressure on the resources of the local Emergency Response Team; 2) concerns about notice requirements under a Memorandum of Understanding between the Commission and the Bureau of Land Management (BLM) and the U.S. Forest Service; 3) alleged defects in the BLM leasing program; and 4) concerns about the lack of operating history of the applicant. Consultation was held with the Colorado Department of Public Health and Environment (CDPHE) and the Division of Wildlife (DOW). The CDPHE reported in writing that it had no opposition to the applications. The DOW did not respond in writing to the consultation but reported verbally to the applicant that it had no objection to the applications. The applicant moved to dismiss the protests of the Amoses in all five cases, and to convert the protest in Docket No. 1010-SP-32 to a Rule 510. Statement. The motion was heard by a Hearing Officer at a Prehearing Conference held on October 13, 2010. The Hearing Officer recommended granting the Motion to Dismiss the protest and treating the protest as a Rule 510. Statement. The primary basis for recommending dismissal of the protest was that the protest was directed towards matters irrelevant to a spacing decision.

Protestent Laura Amos stated the substance of her protest to the Commission. Jamie Jost, attorney for Axia Energy, repeated the basis for her motion for dismissal. After significant Commission discussion and debate, Commissioner Cutright moved to dismiss the protests in Docket Nos. 1010-SP-33 through 36 for lack of standing, and to dismiss the protest in Docket No. 1010-SP-32 on relevancy grounds and to convert the protest into a Rule 510 Statement. The motion was seconded by Commissioner Alward. The motion was approved unanimously.

Commissioner Cutright moved to approve the five Axia applications as submitted. The motion died for lack of a second. Axia proceeded with the presentation of its case.

Attorney Jamie Jost, presented testimony on land matters through Dave Laramie, Manager of Land for Axia Energy; geology through Carl Dietz, Senior Consulting Geologist for Axia Energy; and engineering testimony through Taryn Frenzel, Completions Engineer for the Piceance Team of Axia Energy. The Axia witnesses summarized testimony previously submitted in writing and included in the Commissioners' hearing package.

Commissioner Cutright moved for the approval of all five Axia applications described as follows:

- Cause No. 371, Docket No. 1010-SP-32, Buzzard Field, Mesa County, Applicant: Axia Energy, LLC: Request for an order to establish an approximate 480-acre drilling and spacing unit consisting of the E½ W½, E½ of Section 11, Township 9 South, Range 95 West, 6th P.M., for the production of gas and associated hydrocarbons from the Williams Fork and Iles Formations, and allow the equivalent of one well per 10 acres.
- Cause No. 371, Docket No. 1010-SP-33, Buzzard Field, Mesa County, Applicant: Axia Energy, LLC: Request for an order to establish an approximate 640-acre drilling and spacing unit consisting of Section 14, Township 9 South, Range 95 West, 6th P.M., for the production of gas and associated hydrocarbons from the Williams Fork and Iles Formations, and allow the equivalent of one well per 10 acres.
- Cause No. 371, Docket No. 1010-SP-34, Buzzard Field, Mesa County, Applicant: Axia Energy, LLC: Request for an order to establish

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three approximate 320-acre drilling and spacing units consisting of the E½ of Section 1, E½ of Section 2, and the N½ of Section 12, Township 9 South, Range 95 West, 6th P.M., for the production of gas and associated hydrocarbons from the Williams Fork and Iles Formations, and allow the equivalent of one well per 10 acres.

- Cause No. 371, Docket No. 1010-SP-35, Buzzard Field, Mesa County, Applicant: Axia Energy, LLC: Request for an order to establish five 160-acre drilling and spacing units consisting of the SW¼ of Section 1 and the four quarters of Section 23, Township 9 South, Range 95 West, 6th P.M., for the production of gas and associated hydrocarbons from the Williams Fork and Iles Formations, and allow the equivalent of one well per 10 acres.
  
- Cause No. 371, Docket No. 1010-SP-36, Buzzard Field, Mesa County, Applicant: Axia Energy, LLC: Request for an order to allow the equivalent of one well per 10 acres consisting of the SW¼ of Section 36 (unspaced) and the W½ of Section 13 (spaced 160s), Township 9 South, Range 95 West, 6th P.M., for the production of gas and associated hydrocarbons from the Williams Fork and Iles Formations.

Commissioner Alward seconded the motion. During the Commissioners' discussion on the matter, Commissioners Houpt and Alward expressed their opinions that the testimony on percent of resource recovery difference between 10-acre well density and 20-acre well density was not adequately developed. The motion was approved unanimously.

**Other Matters**

Carol Harmon informed the Commissioners that the attorneys for EOG requested that the Order in the matter of Cause No. 421, Docket No. 1010-SP-28, EOG Resources, Inc. reflect that there had been an administrative hearing in the matter. Jamie Jost, attorney for EOG, offered the following language to be included in the final order: "On October 14, 2010, EOG participated in an administrative hearing with Commission staff and presented live testimony regarding the application and exhibits submitted in support of the application." Commissioner Cutright moved for the inclusion of the recited language in the final order in this matter. The motion was seconded and approved unanimously.

**Commissioners' 2011 Retreat**

The Commissioners considered a date for a retreat near the first of February 2011. It was decided to schedule the retreat through electronic mail exchanges. The decision as to whether to hold the retreat in conjunction with the February meeting or as a separate event was deferred.

Adjourned at 4:30 p.m.

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The Secretary was therefore authorized to issue the following orders:

- Cause No. 318-10, Docket No. 1009-SP-25, Republican Field, Yuma County, Applicant: Augustus Energy Partners, LLC: Order vacating an existing

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160-acre drilling and spacing unit and establishing two approximate 80-acre laydown drilling and spacing units consisting of the N $\frac{1}{2}$  NE $\frac{1}{4}$  of Section 18 and the S $\frac{1}{2}$  NE $\frac{1}{4}$  of Section 18, Township, 1 North, Range 44 West, 6th P.M.

- Cause No. 527-7, Docket No. 1009-SP-26, Sulphur Creek Field, Rio Blanco County, Applicant: Williams Production RMT Company: Order establishing a 160-acre drilling and spacing unit consisting of the NE $\frac{1}{4}$  of Section 16, Township 3 South, Range 97 West, 6th P.M.
- Cause No. 527-8, Docket No. 1009-UP-54, Sulphur Creek Field, Rio Blanco County, Applicant: Williams Production RMT Company: Order pooling all nonconsenting interests in the proposed approximate 160-acre drilling and spacing unit consisting of the NE $\frac{1}{4}$  of Section 16, Township 3 South, Range 97 West, 6<sup>th</sup> P.M.
- Cause No. 421-3, Docket No. 1010-SP-28, Hereford Field, Weld County, Applicant: EOG Resources, Inc.: Order establishing eighty-three approximate 640-acre drilling and spacing units consisting of various lands in Township 12 North, Range 61 West, 6th P.M., Townships 10, 11 and 12 North, Ranges 62 and 63 West, 6th P.M., Townships 11 and 12, Range 64 West, 6th P.M., and allow one horizontal well per said unit.
- Cause No. 10-10, Docket No. 1010-SP-29, Keota Field, Weld County, Applicant: Continental Resources, Inc.: Order establishing two approximate 640-acre drilling and spacing units consisting of Sections 5 and 8, Township 9 North, Range 61 West, 6th P.M., for the drilling of one exploratory horizontal well in each unit, with the lateral in the Niobrara Formation not closer than 600 feet from the unit boundaries or 300 feet from any other wellbore that has penetrated the Niobrara Formation.
- Cause No. 10-11, Docket No. 1010-SP-30, Keota Field, Weld County, Applicant: Continental Resources, Inc.: Order establishing an approximate 1,280-acre drilling and spacing unit consisting of Sections 4 and 9, Township 9 North, Range 61 West, 6th P.M., for the drilling of one exploratory horizontal well, with the lateral within the Niobrara Formation not closer than 600 feet from the unit boundaries and not closer than 300 feet from any other wellbore that has penetrated the Niobrara Formation.
- Cause No. 407-378, Docket No. 1010-SP-38, Unamed Field, Weld County, Applicant: Petroleum Development Corporation: Order amending Order No. 407-374 by establishing an approximate 640-acre drilling and spacing unit consisting of Section 14, Township 6 North, Range 61 West, 6th P.M., for the production of oil and gas and associated hydrocarbons from the Niobrara Formation, and allow up to two optional horizontal wells in such unit, with the initial penetration lateral leg and bottomhole location not closer than 460 feet from the boundaries of the unit.
- Cause No. 510-55, Docket No. 1010-SP-39, Grand Valley Field, Garfield County, Applicant: Williams Production RMT Company: Order establishing an approximate 160-acre exploratory drilling and spacing unit consisting of the W $\frac{1}{2}$  E $\frac{1}{2}$  of Section 32, Township 7 South, Range 96 West, 6th P.M., for the drilling of a vertical exploratory well to test the Mancos, Niobrara, Frontier, and

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Dakota/Cedar Mountain Formations ("Deep Formations"), and allowing the optional drilling of a horizontal well within the unit into one or more of the Deep Formations, with the vertical well and the lateral of the horizontal well not closer than 600 feet from the boundary of the unit, and the lateral of the horizontal well not closer than 300 feet from the wellbore of the vertical well.

- Cause No. 407-379, Docket No. 1010-UP-55, Wattenberg Field, Weld County,

Applicant: Great Western Oil and Gas Company LLC: Order establishing an 80-acre drilling and spacing unit consisting of the E $\frac{1}{2}$  SW $\frac{1}{4}$  of Section 31, Township 7 North, Range 63 West, 6th P.M., to accommodate the Heinze 31-23 Well located in the NE $\frac{1}{4}$  SW $\frac{1}{4}$  (API # 05-123-29758), and the Heinze 31-24 Well located in the SE $\frac{1}{4}$  SW $\frac{1}{4}$  (API # 05-123-29759), and to pooling all nonconsenting interests in said unit, for the development and operation of the Codell and Niobrara Formations.

- Cause No. 1-159, Docket No. 1010-GA-16, Washington County,

Applicant: Washington County: Order granting an exemption from Rule 804 for all lands within its boundaries.

- Cause No. 1-160, Docket No. 1010-GA-17, Kit Carson County, Applicant:

Kit Carson County: Order granting an exemption from Rule 804 for all lands within its boundaries.

- Cause No. 191-27, Docket No. 1009-SP-27, Mamm Creek Field, Garfield County, Applicants: Gene R. and Mary J. Hilton: Order dismissing the application for lack of standing by the Applicants.

- Cause No. 371-5, Docket No. 1010-SP-32, Buzzard Field, Mesa County,

Applicant: Axia Energy, LLC: Order establishing an approximate 480-acre drilling and spacing unit consisting of the E $\frac{1}{2}$  W $\frac{1}{2}$ , E $\frac{1}{2}$  of Section 11, Township 9 South, Range 95 West, 6th P.M., for the production of gas and associated hydrocarbons from the Williams Fork and Iles Formations, and allowing the equivalent of one well per 10 acres.

- Cause No. 371-6, Docket No. 1010-SP-33, Buzzard Field, Mesa County,

Applicant: Axia Energy, LLC: Order establishing an approximate 640-acre drilling and spacing unit consisting of Section 14, Township 9 South, Range 95 West, 6th P.M., for the production of gas and associated hydrocarbons from the Williams Fork and Iles Formations, and allowing the equivalent of one well per 10 acres.

- Cause No. 371-7, Docket No. 1010-SP-34, Buzzard Field, Mesa County,

Applicant: Axia Energy, LLC: Order establishing three approximately 320-acre drilling and spacing units consisting of the E $\frac{1}{2}$  of Section 1, E $\frac{1}{2}$  of Section 2, and the N $\frac{1}{2}$  of Section 12, Township 9 South, Range 95 West, 6th P.M., for the production of gas and associated hydrocarbons from the Williams Fork and Iles Formations, and allowing the equivalent of one well per 10 acres.

- Cause No. 371-8, Docket No. 1010-SP-35, Buzzard Field, Mesa County,

Applicant: Axia Energy, LLC: Order to establish five 160-acre drilling and spacing units consisting of the SW $\frac{1}{4}$  of Section 1 and the four quarters of Section

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23, Township 9 South, Range 95 West, 6th P.M., for the production of gas and associated hydrocarbons from the Williams Fork and Iles Formations, and allowing the equivalent of one well per 10 acres.

- Cause No. 371-9, Docket No. 1010-SP-36, Buzzard Field, Mesa County, Applicant: Axia Energy, LLC: Order allowing the equivalent of one well per 10 acres consisting of the SW¼ of Section 36 (unspaced) and the W½ of Section 13 (spaced 160s), Township 9 South, Range 95 West, 6th P.M., for the production of gas and associated hydrocarbons from the Williams Fork and Iles Formations.

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Carol Harmon, Secretary

Approved:

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Joshua Epel, Chair