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September 7, 2012

Director Matt Lepore
Colorado Oil and Gas Conservation Commission
1120 Lincoln Street, Suite 801
Denver, CO 80203

Re: Setback Stakeholder Process and Potential for Rulemaking

Dear Director Lepore:

The Colorado Oil & Gas Association (COGA) acknowledges that the state faces public pressure to address concerns associated with setbacks, and we have respectfully summarized our thoughts on an approach that addresses these concerns without compromising the integrity of a rulemaking based in sound science.

Much of the articulated interest in creating an increased setback has stemmed from citizens and local governments who are unfamiliar with the myriad of existing rules, including opportunities for stakeholder involvement, that govern well locations. The general impression that this is simply a matter of industry ceding locations close to buildings stems from unfamiliarity with the many property owners (both surface and subsurface) with a stake in this discussion.

We recommend the following approach in proceeding with consideration of a setback rulemaking.

1. A primary consideration with regard to setbacks must be to preserve the ability to maximize the efficient recovery of the state's oil and gas resources (i.e. prevention of waste).
2. Any change to existing setbacks must be justified on the basis of sound science. The stakeholder meetings held over the last seven months have not demonstrated deficiencies in the existing setback rules nor have these meetings produced any scientific evidence that could serve as a basis for rulemaking to increase setbacks.

3. As presented by various stakeholders over the past seven months, changes to the existing, long-standing setback rules would disrupt settled property rights expectations and relationships, including but not limited to:

- Impacts to mineral estates, including leasehold development rights.
- Impacts to surface development for residential, commercial and industrial purposes.
- Impacts to agricultural operations.

4. Setback rules should not conflict but rather be in harmony with the statutory obligation of operators to reasonably accommodate surface owner wishes with respect to location of wells and facilities. C.R.S. 34-60-127. COGA contends that Surface Use Agreements must take priority.

5. A key element to the setback rulemaking discussion must be an overview of the existing stakeholders, rules, and procedures that affect well location and the resulting distances from occupied dwelling. It is our hope that this will correct the widely held misperception that wells are located simply as a matter of industry convenience rather than as a result of meaningful dialogue with surface owners and local government designees (LGDs) and a combination of state and local permitting requirements.

6. Because an increased setback distance would be arbitrary in nature, it would be more helpful to articulate and address the concerns implicit in the setback discussion. Setback meeting participants have identified noise, odor, dust, lighting, air emissions, pits, traffic, and water quality protection as key issues of interest in the setback discussion.

- A summary of the noise, odor, dust, lighting, air emissions, water quality protection and other COGCC rules that address public health, safety and welfare issues associated with setback distances should be a key part of the setback discussion.
- To the extent that additional “best management practices” (BMPs) may be appropriate, they should be applied on a site-specific basis through meaningful dialogue between operators, surface owners, LGDs, and COGCC staff which would provide for the best overall mitigation plan and optimum protection. The COGCC Onsite Inspection Policy provides a template in this regard.
- Consideration of site-specific impacts and BMPs as part of the Location Assessment (Form 2A) process provides an opportunity for engagement among operators, surface owners, COGCC Oil and Gas Location Assessment (OGLA) staff and LGDs, consistent with the recommendations of the Governor’s Task Force on Collaborative State and Local Regulation. This type of collaboration would identify the most appropriate site-specific solutions for setback-distance-related concerns.

7. Any setback rulemaking must be confined to this specific issue. Given the scope and complexity of the issues described above, it is our belief that appropriate consideration resulting in the most beneficial outcomes for all of the stakeholders cannot be achieved on an accelerated rulemaking schedule.

With regards,

A handwritten signature in blue ink, appearing to read "Tisha Conoly Schuller". The signature is fluid and cursive, with the first name being the most prominent.

Tisha Conoly Schuller
President & CEO

Cc: Thom Kerr, COGCC