

Colorado Petroleum Association

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Mr. Matthew Lepore, Esq.
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State of Colorado
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Mr. Thom Kerr
Permit Manager, Colorado Oil and Gas Conservation Commission
State of Colorado
1120 Lincoln Street, Suite 801
Denver, CO 80203

Re: COGCC Setbacks Task Force

Dear Messrs.' Lepore and Kerr:

On behalf of the Colorado Petroleum Association (CPA), we appreciate this opportunity to submit comments regarding the COGCC Setbacks Task Force (Task Force) process. Thank you for facilitating discussions among interested stakeholders during the past seven months. The Task Force has provided stakeholders with improved understanding and appreciation for the sensitivities and perspectives of various land uses and activities. This opportunity to meet and discuss difficult issues has also helped to clarify persistent misinformation and, in turn, provide important dialogue opportunities among interest groups.

CPA member companies operate in challenging environments and settings throughout the United States and around the world. In addition to adhering to strict governmental regulatory regimes, our members seek to accommodate the unique needs of individual surface owners and mitigate the impacts of drilling and production operations on

communities in general. Our member companies have demonstrated leadership in addressing the impacts of oil and gas production through the application of practical and innovative site-specific solutions. If nothing else, this real-world experience has revealed that every operating situation is unique and however well intentioned a “one size fits all” regulatory approach may be, it will never be sufficient to effectively address and mitigate impacts in every situation.

From our perspective, the Task Force discussions have underscored the stakeholder perspectives: farmers, ranchers and land developers clearly articulated the negative impacts on their respective operations if overly prescriptive setbacks are adopted. Industry representatives have discussed the complexities inherent in locating well sites, including the accommodation of individual surface owner needs, mineral owner lease stipulations, spacing and operating rules and technological limitations. Individual citizens offered their perspective regarding the importance of mitigating impacts of adjacent operations. As well, environmental groups have proposed approaches which largely reflect the difficulty of reconciling competing interests with general, statewide rules.

We note that the Governor’s Executive Order Creating the *Task Force on Cooperative Strategies Regarding State and Local Government Regulation of Oil and Gas Development* met for several weeks earlier this year. Despite setbacks being specified in the Executive Order and wide-ranging discussion regarding issues and impacts associated with oil and gas production and regulation, the Task Force ultimately did not identify current setback requirements as an issue in its final report to the Governor. Nor did it suggest the need for further discussion, rules or legislation. Instead, the report to the Governor suggested ways to improve communications among and between operators, local governments and the COGCC. We think it is important to fully implement these recommendations.

As a threshold issue, the Commission must carefully consider the need for formal rulemaking to change the current setbacks regulations as contained in COGCC Rule 603. These current setbacks have been in place for more than a decade. Data and statistics compiled by the COGCC staff since 2009 do not reveal any widespread, persistent problems associated with the current regulations regarding the location of drilling pads, wellheads and associated equipment. In considering this issue, the Commission should identify:

What specific problem is the Commission staff proposing to address via rulemaking?

What factual evidence has been presented to support any change to existing rules?

What, specifically, is the basis for a perceived need for a rule change?

Logically, these questions should be answered first in order to determine if there is a true need for formal rulemaking.

Should the COGCC staff conclude that a formal rule must be promulgated, has it considered the ramifications of such an undertaking? For example:

Does the COGCC intend to confine the setbacks rulemaking to setbacks or will it expand to incorporate other issues such as baseline water sampling, standing, and air emissions, and well bore integrity?

How will a setbacks rulemaking impact mineral ownership, access to minerals and existing lease agreements? Have mineral owners adequately participated in the discussions to this point?

Will expanded setbacks result in Colorado collecting less severance tax revenue? Similarly, will local governments lose ad valorem tax revenue? How much?

How will a setbacks rulemaking impact existing Memoranda of Understanding between operators and local governments throughout Colorado, especially those provisions that require subsequent wells to be drilled from existing pads (*i.e.*, consistent with existing setbacks)?

How will a setbacks rulemaking impact existing surface use agreements between operators and landowners?

How will a setbacks rulemaking address the problem of development encroachment on existing oil and gas facilities (a frequent, but often overlooked aspect of stakeholder presentations)? Should setback rules be accompanied by changes to local government codes to limit encroachment?

Should revised and expanded setbacks preclude surface owner development rights, has the COGCC considered and quantified its potential exposure to damages and compensation?

Similarly, if revised and expanded setbacks limit or eliminate an operator's ability to access mineral deposits, has the COGCC considered and quantified its potential exposure to damages and compensation to mineral owner interests, operators and other property owners?

Will such a rulemaking be proactively applied? Will existing facilities be grandfathered? If not, what setbacks requirements will apply to existing wells which are subject to future workovers, plugbacks and well deepening?

Will the setbacks rulemaking create a “one size fits all” requirement or recognize and distinguish differences between basins based on geology and production technologies?

Has the agency considered simpler and alternative approaches, including retaining current setbacks, but modifying pertinent definitions, *e.g.* High Density Area? Would further refinement and improvements to the Local Government Designee process sufficiently address concerns expressed during the task force, *e.g.* surface conflicts?

To what extent can the need for setbacks modification be addressed through conditions of approval?

Has the COGCC staff undertaken a complete analysis and evaluation of existing setback rules, the Best Management Practices and other flexible approaches implemented by operators in highly populated areas?

As you know, in January the Governor issued Executive Order D2012-002 regarding Regulatory Efficiency Reviews. Among other things, this Executive Order directs each state agency and department to periodically review its rules to ensure they are effective, efficient and essential. Based on the meetings of the Setbacks Task Force, and the Governor's Task Force on Cooperative Strategies Regarding State and Local Government Regulation of Oil and Gas Development, it appears that current setback rules meet these goals and continue to be an effective tool for ensuring land use compatibility without creating undue burdens for operators, landowners, developers and other interests.

In light of the fact that there does not appear to be a documented rationale or evidentiary basis for a rule change, the CPA believes any expansion of the current setbacks requirements will have a substantial effect on producer operating costs, industry investment decisions, and ultimately will create substantial direct and indirect financial impacts on the citizens of the State of Colorado. The need for setbacks rule changes has not been demonstrated and the negative impacts of such a rulemaking are well known and well documented. Worse, the benefits of any such change are limited or unknown and can be achieved in ways other than changes to the numeric setbacks requirements.

CPA believes that the Commission already has the authority to address site specific issues concerns raised by landowners and Local Government Designees as well as the ability to consult with the Colorado Department of Public Health and Environment. We are unsure why this process does not address the issues raised by environmental stakeholders.

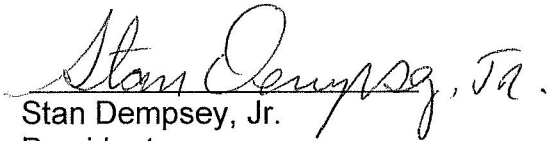
CPA therefore respectfully submits that rulemaking should not be formally noticed until the Commission has: 1) Carefully considered existing regulations and finds that, if properly enforced, the existing regulations are inadequate; 2) any proposed rule(s) can

be supported by a legitimate cost benefit analysis that considers real world compliance costs balanced against demonstrable non-speculative benefits; and 3) any proposed rule(s) must foster regulatory certainty and predictability which provides a framework within which agency discretion may be exercised while preserving landowner rights and the control of their lands.

We strongly recommend that the Commission and its staff to explore alternatives to rulemaking and to provide guidance and relief in those few, specific instances where production operations may have a disproportionate impact on competing land uses. The CPA and its members will continue to provide constructive input to this process and to identify practical solutions which address site-specific issues and concerns.

Thank you for your attention to these concerns.

Respectfully submitted,

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