

**BEFORE THE OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO**

IN THE MATTER OF CHANGES TO THE RULES)	CAUSE NO. 1R
OF PRACTICE AND PROCEDURE OF THE OIL)	
& GAS CONSERVATION COMMISSION OF THE)	DOCKET NO. 180900646
STATE OF COLORADO)	
)	TYPE: RULEMAKING

ALLIED LOCAL GOVERNMENTS’ PRE-HEARING STATEMENT

The undersigned local governments, Boulder County, the City of Lafayette, the City and County of Broomfield, and the Town of Erie, participating together as the Allied Local Governments (“ALG”), respectfully submit this Pre-Hearing Statement.

The ALG has reviewed the draft rule changes and the proposed Statement of Basis and Purpose. It has also participated in all stakeholder meetings scheduled to this point. While the ALG understands the two main purposes of this rulemaking are to implement pooling process changes required by S.B. 18-230 and to streamline hearing and application processes and procedures, the ALG sees further opportunities to improve the 500 series, particularly making the rules more fair and accessible for local governments and other parties.

The ALG’s proposed redlines are attached in Appendix A. Only those rules for which the ALG proposes changes are included in Appendix A: 503, 506, 507, 508, 509, 511, 519, and 530. Those changes are listed and categorized below.

1. Changes to clarify and simplify local governments’ rights to participate in COGCC proceedings

Several sections and sub-sections of various rules unnecessarily limit local government participation. By limiting several rule areas to “the relevant” local government rather than an affected local government, jurisdictions that closely border significant facilities are left out of agency proceedings despite adverse impacts that will affect their lands and residents. Secondly, the addition of “legally protected interest” as a requirement for submitting applications to the agency is difficult to apply to a local government and may result in preventing local government access under that provision. The following summarizes rule changes proposed in this category:

- a. 503.b(6)C—changing the relevant local government to an affected local government.
- b. 503.b(9)—specifically including any affected local government in the opportunity to seek relief from the Commission.

- c. 507.b(4)—including the local government that is the site of an established unit for notice of location setback changes.
 - d. 507.b(6)—adding local government jurisdiction to those factors to be considered as to who might get notice in miscellaneous circumstances.
 - e. 507.c—clarifying that notice goes to the LGD of any affected local government.
 - f. 509.a(2)B—changing the relevant local government to an affected local government.
2. Amending local government protest procedures to be consistent with participation as of right

While Rule 509 (both the original and as proposed for amendment) allows local governments to protest matters as of right, it also requires them to provide significant pleadings to prove their eligibility to protest. These are flatly inconsistent provisions. The required pleading elements have been used repeatedly to dismiss local government’s protests, eliminating the opportunity clearly provided by the rules. The ALG proposes changes to clarify that local government intervention is of right and only essential information must be submitted. The following changes are suggested:

- a. 509.a(2)B—providing a streamlined set of contents for a local government protest pleading.
 - b. 509.a(2)C—clarifying that only interveners by permission need to include the stated elements.
3. Fairness in pooling procedures

The Commission has received significant public and industry comment about pooling procedures and concerns over fairness. While S.B. 18-230 made certain changes to the pooling statute, many concerns remain. The ALG proposes two changes that are not inconsistent with the Oil and Gas Conservation Act and are within the Commission’s rulemaking authority to enact that would improve the fairness – actual and perceived – of both voluntary and involuntary pooling procedures. First, an applicant to pool others’ mineral should own at least 51% of the mineral rights within the unit slated for pooling to ensure that the group of affected owners is being treated fairly and equitably. Second, minerals purchased with public funds specifically for the purpose of preservation and conservation – by governmental or quasi-governmental entities or by nonprofit or publicly-funded conservation land trusts – should not be eligible for involuntary pooling. The following changes are proposed:

- a. 503.b(2)—requiring at least 51% mineral ownership in a unit before applying to pool or unitize.
- b. 530.a—prohibiting involuntary pooling of governmentally or land trust owned minerals purchased for preservation or conservation purposes.

4. Local public forums should be available for any significant development application

Rule 508 as written prevents careful and public consideration of significant oil and gas development because its application threshold is badly outdated. The rule only applies where an application will result in more than one well “or multi-well site” in a 40-acre quarter-quarter section. In today’s environment, a “multi-well site” might include 50 or more wells and disturb 20 or more acres. Thus, the rule virtually eliminates itself by excepting from its reach a proposal for any number of wells on 40 acres simply because they are consolidated into a single pad. Because the average modern multi-well pad in the GWA appears to contain 20 wells, the ALG proposes that Rule 508 apply to any proposal that results in more than 21 wells in a quarter-quarter section. Secondly, various provisions of the rule are inconsistent as to whether the rule applies to applications generally or only to applications for additional density. The introductory section states that it applies to any application that results in the requisite density. *See* Rule 508.a (rule applies “to *applications* that would result . . . or *that request approval for additional wells* that would result. . .” in the specific well density). Therefore, those sections that suggest the rule applies only to applications for additional density need to be amended. The following changes are recommended:

- a. 508.a – applying the rule to applications resulting in more than 21 wells per 40 acres.
- b. Clarifying that the rule applies to any applications meeting the threshold, not just those for additional wells:
 - i. 508.b(2);
 - ii. 508.b(3); and
 - iii. 508.i.

5. Requiring competent and sufficient evidence of mineral ownership

Reading through Rule 503.b, it is clear that mineral ownership is a threshold requirement for the most substantial relief granted by the Commission. It also forms the basis for the use of others’ surface property and the pooling of others’ minerals, even against their will. However, the Commission has routinely accepted only summary evidence of mineral ownership without

requiring the safeguards for such evidence required under CRE 1006 and numerous court opinions. *See, e.g., U.S. Welding, Inc. v. B&C Steel, Inc.*, 261 P.3d 513, 518 (Colo. App. 2011). The Commissioners discussed this issue at the July 31, 2018, hearing and expressed concern over the adequacy of such evidence. The ALG proposes that the rules (and hearing policies) be amended to require (i) initial demonstration of the minimum mineral ownership required in the particular proceeding through duplicates of actual oil and gas leases and the chain of conveyances by which the applicant obtained the lease rights; and (ii) if a protestor or intervener can show some evidence disputing the asserted ownership, further documentation to answer those challenges. The following redlines address these issues:

- a. 503.b.(1), (2) – specifying necessary evidence of mineral ownership to be included in applications.
 - b. 511.c.5 – specifying evidence of mineral ownership in administrative proceedings.
 - c. 511.d.3 – specifying evidence of mineral ownership in administrative proceedings
6. Clarifying deadlines for protest filings

The rules, along with the form notices of hearing, create ambiguity about the due date for protests or interventions. The ALG does not oppose staff’s proposal to move those due dates to 30 days before the subject hearing. However, the rules and the notices should be amended to make very clear that the due date does not change if the hearing is later continued or whether a date has been otherwise set for any reason. To that end, the ALG makes the following recommendations:

- a. 506.c— clarify that this rule regarding continuances is “notwithstanding 509.a(1)” to alleviate inconsistency.
 - b. 509.a(1)—clarify that the primary rule on protest/intervention due dates is subject to 506.c or other statements in a Notice of Hearing.
 - c. Notice of Hearing form—in providing the protest/intervention due date, state clearly that such date will not change if the hearing is continued per Rule 506.c
7. Clarity in the application of rules of procedure and evidence

Rule 519 invokes the Colorado rules of civil procedure and of evidence, while preserving discretion for hearing officers and the Commission to relax those rules for efficiency and justice. The ALG does not dispute that approach. However, the rules do not provide adequate clarity for

parties entering into agency proceedings and the proposed amendments only add to the uncertainty. Therefore, the ALG makes the following suggestions:

- a. 519.a—the addition of “as otherwise directed by the Hearing Officer” introduces too much uncertainty and the ability for hearing officers to be inconsistent in applying rules of procedure; it should be struck.
- b. 519.b—streamlining the rule language in referring to the rules of evidence; also, the phrase “applicable before a trial court without a jury” has little meaning as there is only one set of evidentiary rules and sufficient discretion to relax the rules is already incorporated into the rule.

RESPECTFULLY SUBMITTED this 22nd day of August 2018.

BOULDER COUNTY, COLORADO

By: Katherine A. Burke
Katherine A. Burke, Atty. Reg. #35716
Senior Assistant County Attorney

Attorneys for Boulder County, Colorado

By: Kimberly Sanchez
Kimberly Sanchez
Senior Chief Planner and LGD

CITY OF LAFAYETTE, COLORADO

By: Jeffery P. Robbins
Jeffery P. Robbins, Atty. Reg. #26649
Goldman, Robbins, Nicholson & Mack, P.C.

Attorneys for City of Lafayette, Colorado

CITY AND COUNTY OF BROOMFIELD,
COLORADO

By: Elizabeth Paranhos
Elizabeth Paranhos, Atty. Reg. #39634
deLone Law, Inc.

*Attorneys for City and County of Broomfield,
Colorado*

TOWN OF ERIE

By: Barbara Green
Barbara Green, Atty. Reg. #15022
Sullivan Green Seavy

Attorneys for Town of Erie, Colorado

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **AFFILIATED LOCAL GOVERNMENTS' PRE-HEARING STATEMENT** was served electronically, this 22nd day of August 2018, to the following:

Julie Prine
Hearings and Regulatory Affairs Manager
Docket No. 180900646
julie.prine@state.co.us

Apollo Operating
jwhite@apollooperating.com

Adams County Board of Commissioners
robbins@grn-law.com
cdougherty@adcogov.org

Colorado Alliance of Mineral and Royalty Owners (CAMRO)
cindy@visanibargell.com
neilray@centurylink.net

City of Boulder
mattsura.law@gmail.com

Colorado Oil & Gas Association (COGA)
andrew.casper@coga.org
mmathews@bhfs.com
jrhine@bhfs.com

Colorado Petroleum Association
angie@coloradopetroleumassociation.org

Colorado Petroleum Council/American Petroleum Institute (CPC/API)
jmartin@bwenergylaw.com
bentleyt@api.org

Colorado State Land Board
catie.stitt@state.co.us

ConocoPhillips
jjost@jostenergylaw.com
kwasylenky@jostenergylaw.com

Crestone Peak Resources
jjost@jostenergylaw.com
kwasylenky@jostenergylaw.com

Extraction Oil & Gas
jpierzchala@wsmtlaw.com

Garfield County
kwynn@garfield-county.com

Great Western Operating
jjost@jostenergylaw.com
kwasylenky@jostenergylaw.com

Herv Oil
bennett.neale@hervoil.com

HighPoint Operating

jjost@jostenergylaw.com

kwasylenky@jostenergylaw.com

kwonstolen@billbarrettcorp.com

Incline Energy Partners

brent.chicken@steptoe-johnson.com

Incline Niobrara Partners

cbourke@swlaw.com

Ironhorse Exploration Partners

ahorsman@ihexp.com

Kerr-McGee

kimberly.mendoza-cooke@anadarko.com

Mallard Exploration

jjost@jostenergylaw.com

kwasylenky@jostenergylaw.com

Rocky Miller

rocky@milleroandg.com

Okreek Oil and Gas

shane@okreek.com

PDC Energy

dave.neslin@dgsllaw.com

greg.nibert@dgsllaw.com

Renegade Oil & Gas

jbcrog@aol.com

ed@renegadeoilandgas.com


URSA Resources

jjost@jostenergylaw.com

kwasylenky@jostenergylaw.com

Western Colorado Energy
wce.jbowers@gmail.com

Wolf Resources
kconners@wolfresourcesllc.com



Cathy Peterson, Legal Assistant

APPENDIX A

ALLIED LOCAL GOVERNMENTS' PROPOSED CHANGES

RULES OF PRACTICE AND PROCEDURE

503. ALL OTHER PROCEEDINGS COMMENCED BY FILING AN APPLICATION

a. All proceedings that may require a Commission decision, other than those initiated by the Commission, ~~or a variance request submitted to the Director, or a Petition for Review shall~~ may only be commenced by filing a formal application with the Commission ~~the original, two hard copies, and an electronic copy of a typewritten or printed application electronically in a manner as determined by the Director. The application shall also be submitted on compatible electronic media.~~ All operators' applications ~~should~~ will include the operator's identification number, the applicable lands affected, and they type of application being submitted. The application ~~shall~~ will also set forth in reasonable detail the relief requested and the legal and factual grounds for such relief. The ~~original of the~~ application ~~shall~~ will be executed by a person with authority to do so on behalf of the applicant, and the contents thereof ~~shall~~ will be verified by a party with sufficient knowledge to confirm the facts contained therein. The originally signed application will be maintained by the filing party. The electronically submitted application, and all subsequent documents submitted electronically, will be considered a Commission official / public record.

With the exception of those from state and local government agencies, each application ~~shall~~ will be accompanied by a docket fee established by the Commission (see Appendix III), except applications seeking an order finding violation or an emergency order.

a.b. Applications to the Commission may be filed by the following applicants:

- (1) For purposes of applications for the creation of drilling units, applications for additional wells within existing drilling units, other applications for modifications to existing drilling unit orders, or applications for exceptions to Rule 318-, only those owners within the proposed drilling unit, or within the existing drilling unit to be affected by the application, may be applicants. The application must include a duplicate of the mineral lease from which ownership arises and duplicates of all conveyance documents by which the applicant assumed those lease rights. If a protestor or intervenor participating pursuant to Rule 509 provides a reasonable basis to challenge the asserted mineral ownership, further documentary evidence will be required.
- (2) For purposes of applications for involuntary pooling orders made pursuant to §34-60-116, C.R.S., or applications for unitization made pursuant to §34-60-118, C.R.S., only those persons who own ~~at least a 51%~~ an interest in the mineral estate of the tracts to be pooled or unitized may be applicants. The application must include a duplicate of all mineral leases from which the asserted 51% ownership arises and duplicates of all conveyance documents by which the applicant assumed those lease rights. If a protestor or intervenor participating pursuant to Rule 509 provides a reasonable basis to challenge the asserted mineral ownership, further documentary evidence will be required.

~~(3)~~ For purposes of applications for unitization made pursuant to §34-60-118, C.R.S., only those persons who own an interest in the mineral estate underlying the tract or tracts to be unitized may be applicants.

~~(4)~~(3) For purposes of seeking an order finding violation, only the Director may be an applicant.

~~(5)~~(4) For purposes of seeking a variance from the Commission, only the operator, mineral owner, surface owner or tenant of the lands which will be affected by such variance, other state agencies, any local government within whose jurisdiction the affected operation is located, or any person who may be directly and adversely affected or aggrieved if such variance is not granted, may be an applicant.

~~(6)~~(5) For purposes of seeking a hearing pursuant to Rules 216.f.(4), 303.c.(2), or 303.j.(2), the operator seeking approval of the Application for Permit-to-Drill, Form 2, or an Oil and Gas Location Assessment, Form 2A, may be the applicant.

~~(7)~~(6) For purposes of seeking a hearing on approval of an Application for Permit-to-Drill, Form 2, or an Oil and Gas Location Assessment, Form 2A, under Rule 305.e.(2), any of the following may be the applicant:

A. The operator;

B. The surface owner, solely to raise alleged noncompliance with Commission rules or statute, or to allege potential adverse impacts to public health, safety, and welfare, including the environment and wildlife resources, that are within the Commission's jurisdiction to remedy; and

C. ~~The relevant~~ An affected local government, provided that the hearing shall will be conducted in similar fashion as is specified in Rules 508.j, 508.k, and 508.l with respect to a public issues hearing. It shall will be the burden of the local government to bring forward evidence sufficient for the Commission to make the preliminary findings specified in Rule 508.j at the outset of such hearing.

~~(8)~~(7) For purposes of seeking a hearing on provisions related to measurement pursuant to Rule 328 or 329, the mineral interest owner may be the applicant.

~~(9)~~(8) For purposes of seeking a hearing for an order limiting surface density pursuant to Rule 1202.d.(5), the operator shall will be the applicant.

~~(10)~~(9) For purposes of seeking relief or a ruling from the Commission on any other matter not described in (1) through (9) above, only persons who can demonstrate that they have a legally protected interest that will be directly and adversely affected or aggrieved by the conduct of oil and gas operations or an order of the Commission and that their interest is entitled to legal protection under the Act, or an affected local government,

may be an applicant.

c. An amended application will be required if the applicant makes any material change to a filed application. Submission of an amended application will be considered newly filed for protest and hearing dates, based on its submission date.

~~b-d.~~ Applications subject to the requirements for local public forums under Rule 508.a. shall will be accompanied by a proposed plan (the "Proposed Plan") to address protection of public health, safety, and welfare, including the environment and wildlife resources, and a description of the current surface occupancy/use. The Proposed Plan shall will include the rules and regulations of the Commission as they are applied to oil and gas operations in the application lands along with any procedures or conditions the applicant will voluntarily follow to address the protection of public health, safety, and welfare, including the environment and wildlife resources.

~~e-e.~~ Upon the filing of an application, the Secretary shall will set the matter for hearing and ensure that notice is given. Applications will include a list of all persons entitled to receive notice pursuant to these rules.

~~d.~~ No later than seven days after the application is filed, the applicant shall submit to the Commission a certificate of service demonstrating that the applicant served a copy of the application on all persons entitled to notice pursuant to these rules by mailing a copy thereof, first class postage prepaid, to the last known mailing address of the person to be served, or by personal delivery. The applicant shall at the same time submit to the Commission a list of all persons entitled to notice pursuant to these rules on compatible electronic media.

~~e.~~ The applicant shall enjoy a rebuttable presumption that it has properly served notice on persons entitled to notice of the proceeding by demonstrating through certification or testimony that notice was provided pursuant to Rules 507. and 508.

f. In order to continue to receive copies of the pleadings filed in a specific proceeding a party who receives notice of the application shall file with the Secretary a protest or intervention in accordance with these rules.

~~g.~~ Subsequent to the initiation of a proceeding, all pleadings filed by any party shall be offered by filing with the Secretary the original, two hard copies, and an electronic copy bearing will reference the docket number assigned to such proceeding. Each pleading shall will include the certificate of the party filing the pleading that the pleading has been served on all persons who have filed a protest or intervention in accordance with these rules, by mailing a copy thereof, first-class postage prepaid, to the last known mailing address of the person to be served, or by personal delivery.

506. HEARING DATE/CONTINUANCE

a. All applications shall will be filed no later than sixty (60)ninety (90) days in advance of the hearing date for which the applicant proposes the matter be docketed provided the docket has not been filled by the Secretary. The Secretary shall will have the discretion to accept applications later than sixty (60)ninety (90) days prior to the hearing date, subject to docket availability and the notice requirements of Rules 507. and 508. The Secretary shall grant the first request by an applicant for a continuance of any matter three (3) business days before the scheduled hearing, provided

that a protest has not been filed. The Secretary or ~~a~~ Hearing Officer ~~shall~~will have the discretion to grant any motion for continuance. The Commission may at any time direct the Secretary to discontinue granting continuances.

- b. In all rulemaking proceedings, hearings ~~shall~~will be held in accordance with Rule 529.
- c. The Commission, Director, Secretary, or Hearing Officer may for good cause cancel or continue any hearing to another date. Notwithstanding Rule 509.a(1), Any continuance of a hearing ~~shall~~will not extend the filing deadline for the filing of protests or interventions in accordance with Rule 509, unless the application is amended, or as otherwise ~~allowed~~directed by the Commission.
- d. When a Commission hearing is scheduled for multiple days the Secretary may estimate the time and date that a given matter may be heard by the Commission. The Commission may, in its discretion, ~~change at its discretion~~ the proposed hearing docket, including the time or date of any scheduled hearing. It ~~shall~~will be the responsibility of the participating ~~party~~parties and ~~its~~ attorneys to be present when the Commission hears the matter.

507. NOTICE FOR HEARING

a. General notice provisions.

- (1) When any proceeding has been initiated, the Commission ~~shall~~will require a copy of the application together with a notice of such proceeding to be given to all persons specified in the relevant sections of Rules 507.b. and 507.c. at least ~~35 days~~sixty (60) days in advance of ~~any the noticed~~ Commission hearing ~~at which the matter will first be heard~~date. Notice ~~shall~~will be provided in accordance with the requirements of §34-60-108(4), C.R.S., and will be drafted by the Secretary and electronically signed. It will be provided to the applicant in sufficient time for delivery to those who require notice.
- (2) The applicant is responsible for service and publication of required notices, including any related costs. No later than thirty (30) days before the noticed hearing date, the applicant will submit to the Secretary a certificate of service demonstrating that the applicant served a copy of the application and notice on all persons entitled to notice pursuant to these rules. The applicant will enjoy a rebuttable presumption that it has properly served notice on persons entitled to notice of the proceeding. The applicant will also provide, no later than thirty (30) days before the noticed hearing date, a notarized affidavit detailing names of publications that received a copy of the notice and the date submitted. The Secretary does not need physical copies of the publications.
- (3) The Secretary ~~shall~~will give notice to any person who has filed a request to be placed on the Commission's general email notification list, hearing notice list, and paid the annual fee therefor. Notice by publication or notice provided pursuant to the hearing notice Commission's general email list ~~shall~~does not confer interested party status on any person.

b. Notice for specific applications.

- (1) **Applications affecting drilling units.** For purposes of applications for the creation of drilling units, applications for additional wells within existing drilling units or other applications for modifications of or exceptions to existing drilling unit orders (except for applications for well exception locations to existing orders which are addressed in subsection 5 of this rule) the application and notice ~~of the application shall~~will be served on the owners within the proposed drilling unit or within the existing drilling unit to be affected by the applications.

- (2) **Applications for involuntary pooling.** For purposes of applications for involuntary pooling orders made pursuant to §34-60-116, C.R.S., the application and notice of the application shall will be served on those persons who own any interest in the mineral estate of the tracts to be pooled, except owners of an overriding royalty interest.
- (3) **Applications for unitization.** For purposes of applications for unitization made pursuant to §34-60-118, C.R.S., the application and notice of the application shall will be served on those persons who own any interest in the mineral estate underlying the tract or tracts to be unitized and the owners within one-half (1/2) mile of the tract or tracts to be unitized.
- (4) **Applications changing certain well location setbacks.** For purposes of applications that change the permitted minimum setbacks for established drilling and spacing units, the application and notice of the application shall will be served on those owners of contiguous or cornering tracts who may be affected by such change and on the local government in whose jurisdiction the drilling and spacing unit is located.
- (5) **Applications for well location exception.** For purposes of applications made for exceptions to Rule 318, exceptions to legal locations within drilling and spacing units, or for an exception location to an existing order, the application and notice of the application shall will be served on the owners of any contiguous or cornering tract toward which the well location is proposed to be moved, provided that when the applicant owns any interest covering such tract, the person who owns the mineral estate underlying the tract covered by such lease shall will also be notified. If there is more than one owner within a single drilling unit and the owners have designated a party as the operator on their behalf, notice shall will be presumed sufficient if served upon the designated operator of the affected formation.
- (6) All other applications. For any application not specified above, the Secretary has discretion to determine who is entitled to receive the application and notice, based on local government jurisdiction, legal interest and potential impact.
- (7) **Orders related to violations.** With respect to the resolution of a Notice of Alleged Violation (NOAV) through an Administrative Order by Consent (AOC), and to applications for an Order Finding Violation (OFV), the application (if any) and notice shall will be provided to the a relevant complainant (if any); to the violator, responsible party, or operator, as applicable; and by publication in accordance with §34-60-108(4), C.R.S.

- c. **Notice to local government, Colorado Department of Public Health and Environment, and Colorado Parks and Wildlife.** For purposes of intervention pursuant to Rule 509, application and notice shall will also be given to the local governmental designee for any affected local government, the Colorado Department of Public Health and Environment, and the Colorado Division of Parks and Wildlife of for applications made under subsections b.(1) and (3) of this rule at the same time that notice is provided to the Commission.

508. LOCAL PUBLIC FORUMS, HEARINGS ON APPLICATIONS FOR INCREASED WELL DENSITY AND PUBLIC ISSUES HEARINGS.

- a. **Applicability of rule.** The provisions of this Rule 508 only apply to applications that would result in more than one (1) well site or multi well site 21 wells per forty (40) acre nominal governmental quarter-quarter section or that request approval for additional wells that would result in more than one (1) well site or multi well site 21 wells per forty (40) acre nominal governmental quarter-quarter section, within existing drilling units, not previously authorized by Commission order (together, for purposes of this rule, an “application for increased well density” or “application”).

b. Local public forum.

- (1) The rules and regulations of the Commission as they are applied to oil and gas operations are expected to adequately address impacts to public health, safety and welfare, including the environment and wildlife resources, which may be raised by an application for increased well density.
- (2) A local public forum may, however, be convened to consider potential issues related to public health, safety, and welfare, including the environment and wildlife resources, that may be raised by an application ~~for increased well density~~ that may not be completely addressed by these rules or the Proposed Plan submitted pursuant to Rule 503.c.
 - A. A local public forum ~~shall~~will be convened on the Commission's own motion, or upon request from the local governmental designee or the applicant.
 - B. A local public forum may be convened at the Director's discretion, or upon receipt of a request for a local public forum from a citizen of the county(ies) in which the application area is situated, after the Director's consideration of the following factors:
 - (i) The size of the application area and the number and density of surface location requested;
 - (ii) The population density of the application area;
 - (iii) The distribution of Indian, federal and fee lands within the application area;
 - (iv) The level of current or past public interest in increased well density in the vicinity of the application area;
 - (v) Whether the application is limited to the deepening or recompletion of existing wells, or directional drilling from existing surface locations; or
 - (vi) Whether the application is limited to an exploratory unit formed for involuntary pooling purposes.
- (3) The Director ~~shall~~will notify the local governmental designee, the Colorado Department of Public Health and Environment, and the Colorado Parks and Wildlife of any application ~~triggering this rule for increased well density~~ no later than seven days after receipt of such application. If the local governmental designee elects to require a local public forum it ~~shall~~will notify the Director of its decision within seven days of receipt of notice of the application.
- (4) The Director ~~shall~~will notify the applicant of any decision to convene a local public forum no later than 14 days after receipt of the application.

c. Local public forums on federal and Indian lands.

- (1) If the surface and the minerals of the application area are comprised in their entirety of federal or Indian lands no local public forum ~~shall~~will be convened because potential impacts to the environment or public health, safety, and welfare on such lands are subject to federal or tribal requirements. All proceedings on any application for increased well density on federal or Indian lands ~~shall~~will be conducted to comply with the obligations contained in any intergovernmental or tribal memoranda of understanding governing the conduct of oil and gas operations on federal or Indian lands.

- (2) If the application area is comprised in part of federal or Indian lands, the Director shall will consult with the appropriate federal or Indian authorities before scheduling any public forum on the application. Insofar as the application includes federal or Indian lands, proceedings thereon shall will be conducted in accordance with this rule and any obligations contained in any intergovernmental or tribal memoranda of understanding governing the conduct of oil and gas operations on federal or Indian lands.
- (3) The Director shall will notify the appropriate federal and Indian authorities of any local public forum to be convened to evaluate an application area that includes federal or Indian lands. Federal or Indian participation in the local public forum may include, without limitation, presentation of the most recent applicable resource management plan(s) and any environmental assessment(s) or environmental impact statement(s) that cover or include all or any portion of the application area.

d. Notice of the local public forum.

- (1) Within seven days from the date the applicant receives notice from the Director that a local public forum shall will be convened, the applicant shall will submit to the Director a list of the surface owners within the application area. In determining the identity and address of a surface owner for the purpose of giving all notices under this rule the records of the assessor for the county in which the lands are situated may be relied upon.
- (2) At least 21 days before the date of the local public forum the Director shall will mail to the listed surface owners notice thereof.
- (3) Within 14 days of receipt of an application for increased well density the Director shall will, by regular or electronic mail or by facsimile copy, provide to the local governmental designee(s), the Colorado Department of Public Health and Environment, and the Colorado Parks and Wildlife notice of the local public forum or notice that based on the factors in Rule 508.b.(2).B above, the Director will not conduct a local public forum
- (4) At least 14 days before the date of the local public forum the Director shall will publish notice thereof in a newspaper of general circulation in the county or counties where the application lands are located.
- (5) The notice for the local public forum shall will state that the forum is being conducted to consider any issues raised by the application that may affect public health, safety, and welfare, including the environment and wildlife resources that are not addressed by the rules or the Proposed Plan.
- (6) Within seven days of receipt of an application for increased well density, the Director shall will post a description of such application on the Commission website.

e. Timing and location of the local public forum.

- (1) As soon as practicable after publication of notice, but at least 14 days prior to the scheduled Commission hearing on the application, the Director shall will conduct the local public forum at a location reasonably proximate to the lands affected by the application. In the alternative, if the hearing is to be held at a location reasonably proximate to the lands affected by the application, the local public forum shall will be replaced by the presentation of statements in accordance with Rule 510. during the hearing on the application.
- (2) The Director shall will immediately notify the applicant of the scheduled time and location of the local public forum.

- (3) To the extent practicable, the local public forum shall/will be scheduled to accommodate the Director or the Director's designee, the participants, and the applicant.
- (4) If the application area is comprised of lands located in more than one jurisdiction the Director shall/will coordinate the local public forum to provide for a single forum at a location reasonably proximate to the lands affected by the application.

f. Conduct of the local public forum.

- (1) A Hearing Officer shall/will preside over the local public forum. The Hearing Officer shall/will provide to the participants an explanation of the purpose of the local public forum and how the Commission may use the information obtained from the local public forum. The purpose of the local public forum is to address the sufficiency of the rules or the Proposed Plan with respect to protection of public health, safety, and welfare, including the environment and wildlife resources.
- (2) The conduct of the local public forum shall/will be informal, and participants shall/will not be required to be sworn, represented by attorneys, or subjected to cross examination.
- (3) Attendance or participation at the local public forum by a Commissioner shall/will not constitute a violation of Rule 515.
- (4) The applicant shall/will participate in the local public forum and present information related to the application.
- (5) The Director shall/will create a record of the local public forum by video-tape, audio-tape, or by court reporter. Such record shall/will be made available to all Commissioners for review prior to the hearing on the application and may be relied upon in making a decision to convene a public issues hearing.

g. Statements.

The local public forum shall/will be conducted to allow elected officials, local government personnel, and citizens to express concerns not completely addressed by the rules or the Proposed Plan or make statements regarding the potential impacts from applications for increased well density that relate to public health, safety, and welfare, including the environment and wildlife resources. Issues raised in the local public forum may include the following:

- (1) Impact to local infrastructure;
- (2) Impact to the environment;
- (3) Impact to wildlife resources;
- (4) Impact to ground water resources;
- (5) Potential reclamation impact; and
- (6) Other impact to public health, safety, and welfare

The local public forum shall/will be limited to matters that are within the jurisdiction of the Commission.

h. **Report to the Commission.** At the conclusion of the local public forum the Hearing Officer shall will prepare and submit to the Commission a report of the proceedings. A copy of the report shall will be made available, no later than seven days prior to the hearing on the application, to the Commissioners, the applicant, the Colorado Department of Public Health and Environment or the Colorado Parks and Wildlife if it consulted on the application, any affected local government and the public and shall will be posted on the Commission website. The report on the local public forum presented to the Commission shall will be included in the administrative record for the application, taking into consideration the nature of the local public forum process.

i. **Conduct of the hearing on the application ~~for increased well density.~~**

- (1) The hearing on the application shall will be conducted in accordance with Rule 528.
- (2) The Commission shall will approve or deny the application based solely on the application's technical merits in accordance with §34-60-116, C.R.S.
- (3) The Hearing Officer for any local public forum shall will present to the Commission the report of the local public forum.
- (4) At the conclusion of the hearing on the application, the Commission shall will consider and decide whether to convene a public issues hearing based on the local public forum or statements made under Rule 510. and any motions to intervene, and the Commission may:
 - A. Approve the application without condition;
 - B. Approve the application with conditions based on the technical testimony presented at the hearing on the application;
 - C. Approve the application, and with the applicant's consent, attach to the order on the application conditions the Commission determines are necessary to address issues related to public health, safety or welfare, including the environment and wildlife resources;
 - D. Approve the application and stay its effective date to convene a public issues hearing in accordance with Rule 508.j; or
 - E. Deny the application.
- (5) If the Commission orders a public issues hearing it shall will set the public issues hearing for the next regularly scheduled Commission meeting unless the applicant requests at a prehearing conference, and the Commission agrees, to convene the public issues hearing immediately following the hearing on the application.

j. **Public issues hearing.**

Upon a request by an applicant, protestant, or intervenor, or on the Commission's own motion, a public issues hearing shall will be convened provided the Commission makes the following preliminary findings:

- (1) That the public issues raised by the application reasonably relate to potential significant adverse impacts to public health, safety and welfare, including the environment and wildlife resources, that are within the Commission's jurisdiction to remedy;
- (2) That the potential impacts were not adequately addressed by:

- A. In the case of an application for increased well density, the application or by the Proposed Plan; or
 - B. In the case of an Application for Permit-to-Drill, by such permit; and
- (3) That the potential impacts are not adequately addressed by the rules and regulations of the Commission.

k. Conduct of the public issues hearing.

- (1) The rules and regulations of the Commission ~~shall~~will apply to all participants in the public issues hearing.
 - (2) The public issues hearing ~~shall~~will be conducted, to the extent practicable, in accordance with Rule 528.
 - (3) After the public issues hearing the Commission may attach conditions to its order on the application to protect public health, safety and welfare, including the environment and wildlife resources, as are warranted by the relevant testimony and that are not otherwise addressed by these rules and regulations and the Proposed Plan. In addition, the Commission may without limitation:
 - A. Direct the applicant to amend its Proposed Plan for Commission review and approval for all or a portion of the application area to address specific issues related to public health, safety and welfare, including the environment and wildlife resources, including any identified impacts of increased well density within all or a portion of the application area, rather than on a single well basis.
 - B. Include in any order a provision to allow the Director discretion to attach specific conditions to individual well permits as the Commission determines are reasonable and necessary to protect public health, safety, and welfare, including the environment and wildlife resources.
 - (4) Any plan or conditions imposed by Commission order that would affect federal or Indian lands ~~shall~~will take into account conditions imposed by the federal or Indian authorities and any federal environmental analysis in order to facilitate regulatory consistency and minimize duplicative regulatory efforts.
 - (5) Any plan or conditions imposed ~~shall~~will take into account cost effectiveness and technical feasibility, and ~~shall~~will not be applied to prevent the drilling of new wells per se.
- i. The Director and the Commission ~~shall~~will use best efforts to comply with the provisions of this Rule 508., however, any deviation from this rule ~~shall~~will not invalidate the Commission's action on the local public forum, the application for increased well density, or the public issues hearing.

509. PROTESTS/INTERVENTIONS/PARTICIPATION IN ADJUDICATORY PROCEEDINGS

- a. The applicant and persons ~~that who~~ have filed with the Commission a timely and proper protest or intervention pursuant to this rule ~~shall~~will have the right to participate formally in any adjudicatory proceeding. ~~Intervention shall be granted by right and without fee to the relevant local government, to the Colorado Department of Public Health and Environment solely to raise environmental or public health, safety, and welfare concerns, and to the Colorado Parks and Wildlife solely to raise concerns about adverse impacts to wildlife resources. Those who are interested parties, including those parties listed in 509.a(2)B, -or who can prove a legal interest under the Act will be considered protestants. Those who are not interested parties, but who can~~

demonstrate to the Commission's satisfaction that their participation would serve the public interest will be considered interveners.

- (1) Subject to the provisions of Rule 506.c or as otherwise stated in a Notice of Hearing, The protest or intervention shallwill be filed with the Secretary, and served on the applicant and its counsel at least 44 days prior to the noticed hearing date.

(2) Description of affected interest:

A. A protest shallwill include information to demonstrate that the person is a protestant under these rules in order for the protest to be accepted by the Commission. If determined by the Hearing Officer that a person is not a protestant, any statement provided will be considered a written comment submitted pursuant to Rule 510.

B. Intervention will be granted by right and without fee to ~~the relevant~~an affected local government; to the Colorado Department of Public Health and Environment solely to raise environmental or public health, safety, and welfare concerns; and to the Colorado Division of Parks and Wildlife solely to raise concerns about adverse impacts to wildlife resources. Such a party shall submit a pleading including:

(i) a description of its concerns as enumerated above;

(ii) a description of the intended presentation including a list of proposed witnesses;

(iii) a time estimate to hear the protest; and

(iii) a certificate of service attesting that the pleading has been served on the applicant and any other party which has filed a protest or intervention in the proceeding. A local government, the Colorado Department of Public Health and Environment, or the Colorado Parks and Wildlife intervening as a matter of right shall include in the intervention information describing concerns relating to the public health, safety and welfare, including the environment and wildlife resources, raised by the application. When an intervention is filed by any local government, the Colorado Department of Public Health and Environment, the Colorado Parks and Wildlife, or any person on an application subject to Rule 508.a, ~~if such an intervention is filed,~~ information on the following shallwill be included:

i. ~~That the public issues raised by the application reasonably relate to potential significant adverse impacts to public health, safety and welfare, including the environment and wildlife resources, that are within the Commission's jurisdiction to remedy; and~~

ii. ~~That the potential impacts were not adequately addressed by the application or by the Proposed Plan; and~~

iii. ~~That the potential impacts are not adequately addressed by the rules and regulations of the Commission.~~

C. A party desiring to intervene by permission of the Commission shallwill include in the intervention pleading information to demonstrate why the intervention will serve the public interest, in which case granting the intervention shallwill be at the

Commission's sole discretion. The Commission Director, at its discretion, may limit the scope of the permissive intervenor's participation at the hearing.

~~(3)~~ The protest or intervention pleading ~~shall~~will include:

~~A.~~ (i) A general statement of the factual or legal basis for the protest or intervention;

~~(ii)~~

~~B.~~ The relief requested;

~~C.~~ (iii) A description of the intended presentation including a list of proposed witnesses;

~~D.~~ (iv) A time estimate to hear the protest or intervention; and

~~E.~~ (v) A certificate of service attesting that the pleading has been served, ~~at least 14 business days prior to the first hearing date on the matter,~~ on the applicant and any other party which has filed a protest or intervention in the proceeding. ~~If the pleading is served by mail the party filing the pleading shall provide an electronic or a facsimile copy of the pleading to the applicant and other persons who have filed a proper protest or intervention in the matter on or before the final date for protest or intervention. If for any reason the party filing the pleading is not able to furnish a copy of the pleading to the applicant and the other persons who have filed a proper protest or intervention on or before the final date for protest or intervention, the party filing the pleading shall so notify the Secretary, the applicant and the other parties to the proceeding.~~

b. The Secretary or the Director may require any additional information necessary pursuant to these rules to ensure the application, protest, or intervention is complete on its face.

~~c. Any person shall have the right to participate in an adjudicatory proceeding by making a 510-statement in accordance with these rules.~~

cd. All pleadings filed pursuant to this rule shall will be submitted electronically in a manner determined by the Director, and will include the application docket number, with an original, two hard copies, and an electronic copy, and shall will be accompanied by a docket fee established by the Commission (see Appendix III). The docket fee shall will be refunded if an intervention is denied. In cases of extreme hardship, the docket fee may be refunded at the discretion of the Commission.

de. If the application is contested, the Commission or the Director, at its discretion, may direct the parties to engage in a prehearing conference in accordance with Rule 527. A prehearing conference may result in a continuance of the hearing, or bifurcation of hearing issues as determined by the Director, or Hearing Officer, ~~or Hearing Commissioner.~~

f. Participation at the hearing:

(1) Adjudicatory hearings shall will be conducted in accordance with Rule 528. and any applicable prehearing orders of the Commission, ~~or its designated or~~ Hearing Officer.

(2) Testimony and cross-examination by a protestant or intervenor shall will be limited to those issues that reasonably relate to the interests that the protestant or intervenor seeks to protect, and which may be adversely affected by an order of the Commission, as determined by the Hearing Officer.

511. UNCONTESTED HEARING APPLICATIONS

- a. If ~~the a~~ matter is uncontested, the applicant may request, and the Director may recommend, approval without a hearing based on Hearing Officer review of the merits of the verified application and the supporting exhibits. If the Director does not recommend approval of the application without hearing, the applicant may request an administrative hearing on the application. For purposes of this rule an uncontested matter shall will mean any application that is not subject to a protest or an intervention objecting to the relief requested in the application and shall will include matters in which all interested parties have consented in writing to the granting of an application without a hearing.
- b. Uncontested matters may be reviewed or heard administratively by a Hearing Officer and recommended for approval on the Commission's consent agenda. ~~The Hearings Manager shall confer with hearing applicants as to which option under c. or d., below, is appropriate for each uncontested application.~~ From time to time, uncontested applications recommended for approval by a Hearing Officer ~~that~~ may be of special interest to the Commission and may be recommended by the Director for presentation to the Commission.
- c. **Applications where Hearing Officer review of sworn written testimony and exhibits is appropriate.** An applicant shall will submit the documents described in 1 through 6 below to the Commission electronically in a manner as determined by the Director at least thirty (30) days prior to the noticed hearing date. The Hearing Officer will determine if additional information / evidence is needed, on a case-by-case basis. If sufficient information is not provided, the application may be continued to the next hearing, at the Hearing Officer's discretion.:

~~(1) Submit the following documents to the Commission at least 21 days prior to the hearing date:~~

- 1A. One (1) original written request for approval under Rule 511 briefly describing reasons the application may be a candidate for recommendation for approval without a hearing based on review of the merits of the verified application and the supporting exhibits (rather than necessitating an administrative hearing before a Hearing Officer);
- 2B. ~~One (1) set of resumes/curricula vitae and S~~sworn written testimony of relevant witnesses verifying land, geologic, and engineering facts and accompanied by attachments or exhibits that adequately support the relief requested in the application, along with resumes/curricula vitae for each witness;
- 3C. A statement, signed under oath, from a person having knowledge of the stated facts, ~~shall, under oath, sign a statement~~ attesting to the facts stated in the written testimony and any attachments or exhibits. The sworn statement need not be notarized, but it shall will contain language indicating that the signatory is affirming ~~the that submitted~~ testimony and supporting documents are true and correct to the best of the signatory's knowledge and belief and, if applicable, that they were prepared by the signatory or under the signatory's supervision;
- 4D. A sworn statement that is a summary of the testimony to support the relief requested in the application, including a request to take administrative notice of repetitive general, technical, or scientific evidence, where appropriate;
- 5E. One (1) set of exhibits which shall will contain relevant highlights in bullet-point format on each exhibit Wherever mineral ownership is a prerequisite to obtain the relief requested, the exhibits must include a duplicate of the mineral lease from which ownership arises and duplicates of all conveyance documents by which the applicant assumed those lease rights. If there is no requirement of a percentage ownership, a single lease and related conveyances is sufficient. If a particular percentage ownership is required, leases and related conveyances sufficient to demonstrate the required percentage ownership are required; and

~~6F.~~ A draft proposed order, if requested by the Hearing Officer, with findings of fact and conclusions of law related to land, geology, engineering, and other appropriate subjects to support the relief requested in the application. Reference to testimony, exhibits, and previous Commission orders shall will be included as findings in the draft proposed order.

~~(2) Submit one (1) email for each application containing editable attachments for each of the following documents to the Hearings Assistant:~~

~~A. Written request for approval;~~

~~B. Written testimony;~~

~~C. Summary of testimony; and~~

~~D. Draft proposed order.~~

d. **Applications where an administrative hearing before one or more Hearing Officer is appropriate.** An applicant shall will submit the following documents to the Commission electronically in a manner as determined by the Director at least seven (7) days prior to the administrative hearing.:

~~(1) Submit the following hard copy documents to the Hearings Manager no later than at the time the administrative hearing is held:-~~

~~1A. Two (2) sets of r~~Resumes/curricula vitae for ~~the all~~ witnesses;

~~2B.~~ A written summary of the testimony to support the relief requested in the application, including a request to take administrative notice of repetitive general, technical, or scientific evidence, where appropriate;

~~3C. Two (2) sets of e~~Exhibits which shall will contain relevant highlights in bullet-point format on each exhibit. Wherever mineral ownership is a prerequisite to obtain the relief requested, the exhibits must include a duplicate of the mineral lease from which ownership arises and duplicates of all conveyance documents by which the applicant assumed those lease rights. If there is no requirement of a percentage ownership, a single lease and related conveyances is sufficient. If a particular percentage ownership is required, leases and related conveyances sufficient to demonstrate the required percentage ownership are required; and

~~4D.~~ A draft proposed order providing land, geology, engineering, and other appropriate findings to support the relief requested in the application. Reference to previous testimony, exhibits, and orders shall will be included as findings in the draft proposed order.

~~(2) Submit one (1) email for each application containing editable attachments for each of the following documents to the Hearings Assistant:~~

~~A. Written request for approval;~~

~~B. Written testimony;~~

~~C. Summary of testimony; and~~

519. APPLICABILITY OF COLORADO COURT RULES AND ADMINISTRATIVE NOTICE

- a. The Colorado Rules of Civil Procedure apply to Commission proceedings unless they are inconsistent with Commission Rules or the Colorado Oil and Gas Conservation Act, ~~or otherwise directed by the Hearing Officer.~~
- b. In general, the Colorado Rules of Evidence ~~applicable before a trial court without a jury shall~~ will be applicable, providing that such rules may be relaxed, where, by so doing, the ends of justice will be better served.
 - (1) ~~To promote uniformity in the admission of evidence, the Commission, to the extent practical, shall observe and conform to the Colorado rules of evidence applicable in civil non-jury cases in the district courts of Colorado.~~
 - (2) ~~When necessary to ascertain facts affecting substantial rights of the parties to a proceeding, the Commission may receive and consider evidence not admissible under the rules of evidence, if the evidence possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs.~~
 - (3) Informality in any proceeding or in the manner of taking testimony shall will not invalidate any Commission order, decision, rule or regulation.
- c. **Administrative notice.** The Commission may take administrative notice of:
 - (1) Constitutions and statutes of any state and of the United States;
 - (2) Rules, regulations, official reports, decisions, and orders of state and federal administrative agencies;
 - (3) Decisions and orders of federal and state courts;
 - (4) Reports and other documents in the files of the Commission;
 - (5) Matters of common knowledge and undisputed technical or scientific fact;
 - (6) Matters that may be judicially noticed by a Colorado district court in a civil non-jury case; and
 - (7) Matters within the expertise of the Commission.

530. INVOLUNTARY POOLING PROCEEDINGS

- a. An application for involuntary pooling pursuant to §34-60-116, C.R.S., may be filed at any time an owner within a drilling and spacing unit established by Commission order, other than a governmental or quasi-governmental body or a publicly-funded or nonprofit conservation land trust, fails or refuses to agree to bear its proportionate share of the costs and risks of drilling and operating the well or to lease its minerals, provided the Commission receives evidence that owners have been tendered a reasonable offer to lease. An application for involuntary pooling may be filed at any time prior to or after the drilling of a well; however, any involuntary pooling order issued shall will be retroactive to the date the application is filed with the Commission unless the payor agrees otherwise.

b. An owner ~~shall~~will be deemed a nonconsenting owner in the area to be pooled if, after at least ~~35-sixty~~ (60) days' written notice of the following information, the owner does not elect in writing to consent to participate in the cost of the well concerning which the pooling order is sought:

- (1) The location and objective depth of the well;
- (2) The estimated drilling and completion cost of the well; and
- (3) The estimated spud date for the well or range of time within which spudding is to occur. An authority for expenditure prepared by the operator and containing the information required above, together with additional information deemed appropriate by the operator ~~shall~~will satisfy this obligation.

c. An unleased owner ~~shall~~will be deemed a nonconsenting owner if, after at least ~~35-sixty~~ (60) days' written notice, the unleased owner has failed or refused a reasonable offer to lease. In determining whether a reasonable offer to lease has been tendered under §34-60-116(7)(d), C.R.S., the Commission ~~shall~~will consider the lease terms listed below for the drilling and spacing unit in the application and for all cornering and contiguous units that are under the proposed lease:

- (1) Date of lease and primary term or offer with acreage in lease;
- (2) Annual rental per acre;
- (3) Bonus payment or evidence of its non-availability;
- (4) Mineral interest royalty; and
- (5) Such other lease terms as may be relevant.

d. All offers to lease or participate must include the Commission's brochure describing its pooling procedures and the mineral owner's options related to pooling.