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April 29, 2019

*VIA Electronic Submittal*

<https://cogcc.state.co.us/comments/view>

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Jeff Robbins, Director  
State of Colorado  
Oil and Gas Conservation Commission  
1120 Lincoln Street, Suite 801  
Denver, CO 80203

RE: SB19-181 Mandated COGCC Director Objective Criteria

Dear Director Robbins,

I am writing on behalf of Extraction Oil & Gas, Inc. ("Extraction") to provide public comment on the Colorado Oil and Gas Conservation Commission (COGCC) Director's draft Objective Criteria (April 19, 2019) and the implementation thereof. Extraction appreciates the hard work you and your staff have put into the draft Objective Criteria and believes the draft Objective Criteria can be improved upon to better reflect SB19-181 and to provide regulatory certainty and consistency for operators and other stakeholders. In evaluating the pending permits that are in queue for Extraction and other operators, most fall into one or more of the proposed criteria, and we believe that this creates additional regulatory uncertainty and inefficiency in contrast with the stated goal of the criteria review process.

Additionally, we believe the current draft includes certain criteria that are not in keeping with the spirit of 181, including the provision for adjacent governments to consult on permits outside their jurisdiction in criterion 3, as well as criterion 2, which should allow for operators with pre-approved local permits and operator agreements to avoid further review, since they have already received local approval (again, in keeping with the local control spirit of the law). We also believe it is in the best interest of operators to honor existing regulations and setbacks for consistency and certainty wherever possible in these proposed criteria, rather than creating new arbitrary distances.

In addition to the comments in this letter, Extraction also supports the comments of the Colorado Oil & Gas Association (COGA), including its draft process comments, and the American Petroleum Institute, d/b/a Colorado Petroleum Council (CPC).

Below are Extraction's specific comments organized by draft criterion. Along with these specific comments, Extraction also joins the trade associations and other operators in proposing an overarching exemption from the application of all Objective Criteria where the relevant local

government has already approved the siting of the Location, whether through the granting of a permit or through the execution of an operator agreement or similar contract. Extraction also offers the global comment that anytime a criterion references distance, the measuring point should be from the wellhead or production facilities at a proposed Location and not the disturbed surface of the Location, as referenced in the criteria footnote. Using the disturbed area of the surface location is inconsistent with current rules and will create distances that are artificially high as the surface will be disturbed only for a short period of time before interim reclamation. Further, most existing state law setbacks are measured from the wellhead or production facility so continuing to use those discrete features as the relevant measuring point ensures consistent application of the COGCC Rules.

### **Draft Criterion #1**

At most, this criterion should be for Locations within 1000' of a UMA or LUMA, but not a Building Unit. 1500' is not a relevant setback under any COGCC rule and 1500' is arbitrarily three times as the length of the current state law setback for Building Units. Further, if all permits proposing locations within 1500' of a Building Unit triggered additional review, the result would be that virtually every permit would be subject to additional review. The delay this would generate would drastically increase the time required to review permits and would undermine the purpose of using an objective criterion to efficiently clear the permitting backlog.

Additionally, the delay would contravene state law, namely §34-60-106(11)(a)(I)(A), C.R.S., which charges the Commission with creating a “timely and efficient” permitting process. SB19-181 did not change this aspect of current law in any way. Additionally, the footnote stating that distance will be measured from the edge of the disturbed area is a both a new and arbitrary criterion and we believe that all distances or setbacks should remain from the wellhead or permanent equipment for consistency and certainty in keeping with the current rule setting.

### **Draft Criterion #2**

This criterion should not apply where the relevant municipality has already granted its approval for the location. “Approval,” in this context, may mean that the relevant municipality has approved a local permit, executed a memorandum of understanding, operator agreement or other document evidencing acceptance of the Location, or submitted a letter or otherwise taken a position that it has no issue with the Location (i.e., “approval” need not necessarily mean the relevant municipality has granted a permit but can also mean that the relevant municipality has taken a position that it has no issue with the siting of the proposed Location). In these instances, the relevant municipality’s choice has been made and it should be respected. This criterion also should not apply if the municipality has decided it does not want to participate in the COGCC’s permitting process or to provide further input beyond the COGCC’s process (i.e. a municipality should be able to “opt out” of having its decision or indecision a basis of COGCC review) or where the relevant municipality does not have siting regulations.

### **Draft Criterion #3**

This is not in the spirit of SB19-181. In the drafting of the new law, the legislature specifically rejected the idea that a local government not having jurisdiction over the surface should have authority over permitting or is a relevant permitting stakeholder. The legislature showed its rejection of this idea by deleting the plural “local governments” from the local disposition language and by specifying that the local government relevant to permitting decisions and applications for establishing pooling units and drilling and spacing units is the “local government having jurisdiction.” This criterion should be removed.

### **Draft Criterion #4**

This criterion markedly departs from the very recently concluded School Setback Rulemaking in an unjustified manner. Measuring the setback from a school’s property line as opposed to the current COGCC definition of a School Facility has the potential to bring in huge swathes of land that are not used by schools and have no near-term intent to be used by a school. The School Setback Rulemaking record is replete with reasons why the school property line is not a relevant demarcation of where students, teachers, staff and the general public may routinely congregate. The relevant setback is also double what was agreed upon in the School Setback Rulemaking. The setback should continue to be, as set forth in the recently completed Rulemaking, 1,000’ from the School building or School Facility. “School” as used in this criterion, if this criterion is amended and left as a criterion at all, also should be capitalized to ensure it refers to the COGCC defined term.

### **Draft Criterion #5**

Extraction seeks confirmation that the terms “public drinking water supply” area and “sensitive area” are intended to be capitalized and therefore reference defined COGCC terms. Without ensuring that these terms are capitalized and relate back to the COGCC defined terms, they are too vague. Operators and the general public alike would be left to guess what qualifies.

### **Draft Criterion #8**

Extraction would appreciate the term “tank” being clarified and defined to distinguish the categories and/or volumes of receptacles that are appropriately included. There may be, for instance, small-scale chemical tanks or water tanks on site, but these should not trigger this threshold. Furthermore, the numbers appear arbitrary. Tanks can range in size and we do not understand the significance of 5,200 barrels from a risk-based perspective.

### **Draft Criterion #10**

This criterion should not apply where the relevant local government (as that term is defined in the COGCC Rules) has already granted its approval for the Location or otherwise demonstrated no issue with the siting of the proposed Location. As mentioned above, state law

under SB19-181 continues to require that the Commission establish a “timely and efficient” permitting procedure. Allowing a local government to request additional consultation may result in undue delay. At minimum, any relevant local government request for additional consultation should be entertained only if (1) there is not already a local government approval, whether through an approved permit or operator agreement or similar contract; (2) the relevant local government provided public comment to the COGCC during the public comment period on the application; and (3) the request for additional consultation is based on articulable, site-specific concerns.

#### **Draft Criterion #15**

This criterion should be stricken because it defeats all stakeholders’ shared goal of plugging legacy wells as efficiently as possible during redevelopment and wells with no economic value or potential environmental harms, etc. Plugging wells is in all parties’ best interest and should not be delayed or dis-incentivized through additional onerous review.

Existing Commission Rules and procedures already require operators in their submittal of Form 6, and the Commission in its approval thereof, to consider site specific circumstances, such as distance from Building Units, surface casing depth and whether there is a pending stray gas investigation. Moreover, hundreds of wells in Colorado are plugged each year and many, if not most, of wells being plugged are within 1,500’ of a Building Unit or High Occupancy Building Unit due to encroachment. This means that nearly all Form 6s would be subject to additional review, which would be a severe administrative burden on the Commission and have the effect of precluding the timely plugging and abandonment of wells. Our company shares the goal of COGCC to eliminate orphan wells throughout Colorado and we feel strongly that the best way to do so is for operators to efficiently P&A legacy and older wells during redevelopment statewide.

As mentioned above, Extraction appreciates the opportunity to offer public comment and looks forward to engaging productively and respectfully with the COGCC and other stakeholders throughout the implementation of SB19-181. Extraction acknowledges that you and your hard-working staff are addressing the draft Objective Criteria on a truncated timetable and would welcome any opportunity provide additional comment or clarification on these comments to you and your staff at any time.

Sincerely,



Josh Carlisle  
EHSR Manager  
Extraction Oil & Gas, Inc.