

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

IN THE MATTER OF CHANGES TO THE)	CAUSE No. 1R
RULES AND REGULATIONS OF THE OIL)	
AND GAS CONSERVATION COMMISSION)	Docket No. 0803-RM-02
OF THE STATE OF COLORADO)	

National Association of Royalty Owners
Rocky Mountain Chapter

HEARING TESTIMONY

The National Association of Royalty Owners, Rocky Mountain Chapter through its undersigned chapter president hereby respectfully submits this Hearing Testimony and Alternate Proposals.

Mineral and royalty owners believe the draft permitting rules fail in three ways:

1. The **permitting** process will be inefficient, redundant, and will infringe upon mineral and land owner rights.
2. The **permitting** process amounts to land use regulation that is not supported by the statutes.
3. **Land owner consent** for wildlife habitat conservation as required by the statute is subverted by the draft rules.

Colorado land and mineral owners have worked for generations to sustain the resources that are the object of these draft rules. We have the most to lose by environmental degradation and regulation that prohibits production. It is our lives that hang in the *balance* the statutes call for. Our efforts on the land have long supported “*environment and wildlife resources*” and we believe we provide an important part of what should remain a diverse decision making process. We are here to explain how we think the *balance* between production and “*environment and wildlife resources*” should be maintained.

Mineral, royalty, and land owners approve of new stricter control of production waste, pit liners, leak monitors, chemicals inventory and use disclosures, sound and odor controls, and VOC capture devices.

EFFICIENT PERMITTING

Public web access to Comprehensive Drilling Plans is appropriate, but upon approval of the CDP further public comment places an unnecessary burden on the Commission staff and the operator. After one public review, approval of the application for permit to drill should be expedited based upon specific engineering criteria and operator compliance. We do not think the COGCC staff has the capacity to manage this complicated system of overlapping permitting layers and repetitive public comment periods.

We see significant areas where the staff is not able to successfully administer existing rules. Specifically, Commission collection and reporting of production data is unreliable. Existing tests and inspections including critically important baidenhead pressure tests and liquid waste removal are not audited or enforced with the frequency that protection of public health and safety requires. Worse, if the Commission staff becomes mired in a permitting morass that does nothing to protect “environment and wildlife resources” and does not have the personnel to administer existing rules everyone involved suffers.

LAND USE REGULATION

The draft permitting rules are predominately land use regulations and do little to determine the real level of risk to public safety that oil and gas drilling might pose. We believe that the statutes require scientific testing of air and water quality and wildlife diversity. We contend that the consultation called for in the statutes is of little consequence if the Department of Health and Division of Wildlife do not have an adequate scientific understanding of the environment in the field. Testing and scientific study we believe are the means to balancing oil and gas production and environmental quality.

The language used in the statutes involved and throughout the proposed rules, *environment and wildlife resources* and *adverse impacts*, must be defined specifically to protect health and public safety. As the rules are now drafted permitting process will lead the Commission into a contentious arena of debate over public land use. Nothing in the organic act empowering the Commission or the new statutes calls for regulation of the view from the Interstate. We do not believe that the Commission is the place to debate or regulate land use.

We appreciate that the intensity of the oil and gas industry has resulted in public complaint. But we believe the intent of the Legislation is to establish scientific testing programs that would allow the Commission, Department of Health, and the DOW to assess risks to public health, safety, and wildlife specifically resulting from oil and gas production. We do not see how the draft rules will lead the Commission to ascertain the validity of public complaints that the Statutes were intended to answer.

We cannot support permitting rules that divert the Commission away from the specific human welfare and safety which the Legislature intended to be protected. Further, if the draft permitting rules impede drilling where no threat to the public or environment has been ascertained this new land use regulation will infringe upon mineral owner property rights, will be unnecessarily onerous to the industry, and will create undue financial hardship to people and communities. We contend that the Commission must not promulgate those rules that constitute a property taking where risk to public health, safety, and wildlife is not scientifically demonstrated.

LANDOWNER CONSENT

H.B. 07-1298 requires the consent of the landowner in wildlife habitat protection. We think it must be made clear in the rules that site-specific permit stipulations, and specifically, wildlife surveys and timing stipulations, may only be required upon the consent of the

landowner. The proposed rules subvert the Legislative language by seeking to apply wildlife habitat stipulations as general rules or requirements in Comprehensive Drilling Plans. The rules then perversely force the operator to obtain landowner consent as a requirement for acceptance of a permit to drill.

If the rules give the land owner the right to prohibit drilling by withholding consent to wildlife stipulations the State has taken property without due process.

If the director can circumvent landowner consent the rules are not supported by the statute.

If the rules make landowner consent to wildlife stipulations mandatory for drilling to proceed the language of the statute is perverted.

Further, circumvention of a clear and direct statement in the statute makes a mockery of the concept of consultation. If applied as the rules state drilling will be prohibited on the majority of private lands for one-quarter of the year, making our resources inaccessible. We think that the 1200 Series Rules are untenable and should be made Best Management Practices.

What astonishes landowners, the true custodians of Colorado's wildlife, is that a long history of cooperation with the Division of Wildlife may be irrevocably damaged by this grasping overreaching bureaucratic assault on our livelihood. Oil and gas revenue is in many places the last chance that many of the large ranches and mineral holdings of Colorado will survive the march of rural residential balkanization. The conservation of privately held wildlife habitat may be impossible without the endowment to the land that results from oil and gas production.

CONCLUSION

We believe that private mineral and landowners provide diversity in the decision making process as we attempt to balance oil and gas production with "*environment and wildlife resource*" protection. We would like to see the Commission trust in that diversity of view by amending the draft rules to make 1200 Series Rules Best Management Practices.

The National Association of Royalty Owners, Rocky Mountain Chapter is a not-for-profit volunteer organization made up of land, mineral, and royalty owners in Colorado and throughout the Rocky Mountain Region. Our mission is to create opportunities for royalty and mineral owners to communicate with each other, the public, legislators, and with the oil and gas industry. Our Educational Foundation conducts seminars, town meetings, and funds scholarships to promote competent management and use of mineral resources. Our organization works with the Colorado Legislature on oil and gas issues and monitors actions of the Colorado Oil and Gas Conservation Commission.

Respectfully submitted this 23rd day of June, 2008.

Roy Savage

President, National Association of Royalty Owners, Rocky Mountain Chapter

Certificate of Service

I, hereby certify that on this 14th day of May, 2008, I hand delivered one original and 16 copies of the above and foregoing Prehearing Statement addressed to the following:

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s/ Roy Savage

