

**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	)	

**LA PLATA COUNTY'S RESPONSE TO REQUEST OF COMMISSIONER MARTIN  
FOR A CHART COMPARING LA PLATA COUNTY'S OIL AND GAS LAND USE  
REGULATIONS WITH THE DRAFT STATE REGULATIONS**

The Board of County Commissioners of La Plata County, Colorado, by and through counsel, Jeffery P. Robbins, La Plata County Attorney, respectfully submits La Plata County's Response to Request of Commissioner Martin for a Chart Comparing La Plata County's Oil and Gas Land Use Regulations With The Draft State Regulations.

1. Attached as Exhibit A is a chart which compares La Plata County's Land Use Regulations with the proposed Draft Rules and Regulations of the Colorado Oil and Gas Commission. As is evident from the chart, there are approximately 17 areas of the proposed new state rules that are in land use areas and which duplicate the land use regulations of La Plata County, Colorado.

2. At the hearing, Commissioner Trési Houpt inquired of La Plata County whether the Rule 521 MOA process would be necessary if the identified rules outlined in Exhibit A were simply removed from the State draft. The Rule 521 memorandum of agreement process evolved from discussions between staff and stakeholders during the prehearing stakeholder process. During that process, La Plata County and other local governments informed Commission staff and the various stakeholders that this rulemaking proposed rules for the Commission in land use areas, which have historically been areas of regulation for local governments. The 521 MOA process was developed to allow the State Commission and local governments an opportunity to work together in recognizing and addressing the fact that certain local governments regulate aspects of oil and gas operations. Using Rule 521, the State Commission and specific local governments could work out the details of the jurisdictional relationship through a specific memorandum of agreement. If the State rules are crafted in a manner that they do not regulate land use and surface use issues, then the need for the memorandum of agreement process becomes less important. However, La Plata County acknowledges that some overlap is going to occur, for instance in the areas of application submittal requirements, notice, and consultation and, thus, this rulemaking is likely to result in state and local rules that touch upon the same subject. Also, some local rules – such as land use setbacks, berming to address compatibility, siting of wells to mitigate land use impacts – overlap with state rules that address the same subject but from a different perspective – setbacks to address safety, berming to address spills, and siting of wells to address downhole recovery. La Plata County believes that a 521 MOA can address these overlap areas and create an effective and timely jurisdictional relationship. On the other hand, La Plata County suggests to the Commission that you should consider the deletion of the draft land use rules in that address wholly land use and surface issue: visual mitigation

(Rules 306 and 804), noise (Rule 802), lighting (Rule 803), Site preparation (Rule 1002), Roads and Transportation (Rule 1203).

RESPECTFULLY SUBMITTED this 25 day of July, 2008.

**LA PLATA COUNTY, COLORADO**

By: Michael Robbins for

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Durango, Colorado 81302  
(970) 259-8747  
Attorney for La Plata County

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the attached La Plata County's Subsequent Filing of Chart Comparing La Plata County's Oil and Gas Land Use Regulations With Proposed State Land Use Regulations Pursuant to Request of Commissioner Jim Martin was served by overnight delivery on the 27<sup>th</sup> day of JULY, 2008, and filed with the Colorado Oil and Gas Conservation Commission as follows:

Patricia Beaver, Hearing Manager  
Docket No. 0803-RM-02  
Oil and Gas Conservation Commission  
1120 Lincoln Street, Suite 801  
Denver, Colorado 80203

Kelly Rees  
Colorado Department of Law  
1525 Sherman Street, 7<sup>th</sup> Floor  
Denver, Colorado 80203

Joshua Epel  
Assistant General Counsel  
DCP Mainstream  
370 17<sup>th</sup> Street, Suite 2500  
Denver, CO 80202

and also certify that an electronic copy of said motion was delivered to:

marc.fine@state.co.us

kelly.rees@state.co.us

All Other Parties as listed in Party List

A handwritten signature in cursive script that reads "Diana L. White". The signature is written in dark ink and is positioned above a horizontal line.

Diana L. White

## Exhibit A

### Comparison Of La Plata County's Land Use Regulations With The Proposed Draft Rules And Regulations Of The Colorado Oil And Gas Commission

#### Draft COGCC Rules

**303- Application Process** - Form 2 for permit to drill, deepen, re-enter, or recomplete. Form 2A for new oil and gas locations. Form 2A requires: five color photographs including one of the proposed access; a list of equipment to be used; a scaled drawing of the site; a topographic map showing surface waters, riparian areas and access from public roads; a designation of current land uses; NRCS soil map description; description of proposed actions to minimize impacts; and any other data required by the Commission, CDPHE or CDOW.

**305- Notice** - When form 2A is complete, Commission will post the application on COGCC website and electronically alert local government, CDPHE, and CDOW. Applicant shall within 5 days of complete application alert all landowners within 500 feet of proposed location. Notice shall inform the recipient of his right to submit comments and request onsite inspection. Notice of actual drilling must be given 30 days before estimated commencement of drilling. Notice of subsequent well operations must be given seven days in advance of the estimated day of commencement.

**306- Consultation** - Operator shall consult in good faith. Within ten days of the consultation, surface owner may request onsite visit to avoid unreasonable crop loss, address impacts to public health and safety, or otherwise ensure compliance with commission rules. Director shall invite: surface owner, operator, CDPHE, and CDOW. As a result of the onsite inspection, Director may include provisions to address: visual or aesthetic

#### La Plata County Regulations

**90-41- Application Process** - All applications shall include a site plan, vicinity maps, weed and disturbance plan, visual mitigation plan, wildlife mitigation procedures, noise mitigation procedures, performance standards checklist, and five color photos. Applications for major facilities must also include a narrative and emergency contact.

**90-75- Notice** - Notice to surface owners of parcels of land within 1/4 mile of the wellhead to include: a description of the site location, contact information of the applicant, brief description of the facilities, and contact information for community development. Notice for major facilities must also be published in a newspaper of general circulation 15-30 days prior to the public meeting. Notice for major facilities must include the time and place of the commissioners' meeting.

**90-123- Consultation** - At the request of either the operator, surface owner, or any other landowner receiving notice, community development department staff will conduct a public site visit with all interested parties to evaluate locations. When possible this site visit will be coordinated with site visits required by COGCC rules.

impacts, surface impacts, noise impacts, dust impacts, ground water impacts, and safety impacts. See 800 series Rules for more detailed description of the Director's authority to include conditions aimed at surface impacts.

**603- Setbacks** - Wellhead shall be 150 feet or 1.5 times the height of the derrick from any building, public road, above-ground utility line or railroad; and 150 feet from surface property lines. In a high density area where a educational facility, hospital, nursing home, care facility or jail is located within 1000 feet, there shall be a 350 foot setback from such facilities. This distance shall be 500 feet for production tanks, pits, or associated equipment if achievable.

**604(a)(4)- Berms** - Berms or other containment devices shall be constructed around crude oil condensate or produced water tanks. Shall be sufficient to contain any spilled or released material.

**700 series- Financial Assurance** - For surface owner protection, \$2000 per well for non-irrigated land, \$5000 per well for irrigated land, or \$25,000 statewide blanket financial assurance. For soil protection, plugging, or abandonment, \$10,000 for wells less than 3000 feet in depth and \$20,000 for wells greater than 3000 feet, or blanket financial assurance of \$100,000. To the extent that operator's inactive well count exceeds financial assurance divided by \$10,000, operator shall post additional financial assurance in the amounts set forth above for abandonment for each excess inactive well. Natural gas gathering and processing facilities must have \$50,000 financial assurance or blanket \$250,000.

**802- Noise Abatement** - Maximum permissible noise measured at 350 feet from 7 AM to 7 PM is: 55 db(a) residential; 60 db(A) commercial; 70 db(A) light industrial; 80 db(A) industrial. From 7 AM to 7 PM is: 50 db(a) residential; 55 db(A) commercial; 65 db(A) light industrial; 75 db(A) industrial. Exhaust from all motors and equipment must be vented

**90-122- Setbacks** - 400 foot setback from nearest existing residential structure. 200 foot setback from closest platted subdivision line. Waiver may be granted if these setbacks are impossible because of OGCC spacing requirements. These setbacks are geared more toward general surface impacts, whereas the COGCC rules are safety oriented.

**90-123(c)- Berms** - Berms may be required for visual mitigation (as opposed to the COGCC requirement, which is intended for spill containment).

**90-50- Performance Guarantee** - Performance bond for each minor or major facility; \$50,000.00 countywide blanket bond for all facilities operated by the applicant within the county; irrevocable letter of credit; or equivalent financial security acceptable to the county. Reclamation activities which fall under O.G.C.C. jurisdiction are exempted from this performance security coverage.

**90-122- Noise** - Exhaust from all engines, motors, coolers and other mechanized equipment shall be vented in a direction away from the closest existing residences or platted subdivision lots. Non-electric motors must have quiet design mufflers. Mechanized equipment must be anchored to reduce vibration. Additional noise buffering may be

away from buildings.

**803- Lighting-** shall be shifted downward and internally to avoid glare on buildings and public roads within 700 feet.

**803- Lighting** – Lighting shall be shifted downward and internally to avoid glare on buildings and public roads within 700 feet.

**804- Visual Impact Mitigation-** Production facilities observable from a public highway shall be painted with uniform, non-contrasting, non-reflective color tones. Director may require employment of site-specific mitigation practices, including siting of roads, well locations, modifying production facility shape or size, using low-profile pumping units, and compelling interim reclamation.

**805- Odors and Dust** - Operator must generally not create a nuisance. Must comply with CDPHE and Air Quality Control Commission. Violation if odors can be detected after diluted by 7 volumes of odor-free air in commercial areas; if odors can be detected after diluted by 15 volumes of odor-free air in other areas. Operators shall employ fugitive dust practices including restriction of traffic, road surfacing, and wind breaks.

**1002- Site Preparation** Drill sites must be fenced at owner's request. Soil removed and segregated. Locate drill pads, access roads, and gathering lines to minimize disturbance. Minimize impacts to wetlands and riparian areas. Consolidate pipeline and road rights-of-way to minimize wildlife impact. Access roads built and maintained to maximize safety and

required where setbacks are not met or to make site more compatible, including use of acoustically insulated housing, vegetative screening, walls or fences and development of noise management plan.

**90-123(c)- Lighting** - Exterior lighting, when required, shall be directed away from residential areas, or effectively shielded from such areas.

**90-123(a) & (c)- Visual Impacts** - Adhere to setback and location requirements; minimize the impact to existing residences; construct using existing infrastructure; site facilities in areas that maximize the amount of natural screening; site the facility at the base of slopes to provide background of topography and/or natural cover; site facilities to avoid crossing hills and ridges or silhouetting; site the facility to minimize the amount of cut and fill; site the facility away from permanent natural features such as distinctive rock and land forms, vegetative banners, river crossings and other landmarks; prepare visual mitigation plan; use of structures of minimal size; feather and thin edges of vegetation; align access roads to follow existing grades; paint facilities uniform, noncontrasting, nonreflective color tones; use minimal pad size for a minor facility; minimize damage to existing trees and vegetation.

**90-108- Odors** - Odors may be considered in determining suitability of location, and compatibility with surrounding land uses (90-19). Dust control is a criteria which may be considered in determining adequacy of road access.

**90-124- Site Preparation and Mitigation** - Wells shall be located so as to use only as much of the surface as is reasonably necessary for the operation of the facility and to avoid the unreasonable loss of agricultural land. Access roads installed and maintained to county engineer standards. Weed control until abandonment.

minimize erosion.

**1003- Interim Reclamation** - Pits and holes backfilled as soon as possible; reclaim areas no longer in use; Soils and groundwater in former drill pits must meet standards; revegetation- soil horizons and vegetation restored as soon as practicable. Weed control under noxious weed management act.

**1000- Final Reclamation** - Debris removed within 3 months; access roads closed, culverts and other obstructions removed (regraded, revegetated and contoured) within 3 months for crop land, 12 months for non-crop land.

**1101, 1103- Pipelines** - Soil backfilled to original grade to cover pipelines; If abandoned, shall be purged of hydrocarbons, cut off three feet below ground level. Notice of abandonment filed with Commission and local government designee. \*

**1202- Wildlife** - Operator must map known occurrences of wildlife species and habitat using accepted CDOW mapping system.

**1203- Roads and Transportation** - Transportation must be planned to minimize impacts of roads on wildlife resources.

**1208- Wildlife** - Operator shall protect Sensitive Wildlife Habitat from adverse impacts through comprehensive drilling plan, consultation, limited surface density, and timing limitations on drilling (specific periods for several enumerated species). 1209- restricted surface occupancy for areas designated by CDOW to the maximum extent technically and economically feasible.

**90-124- Revegetation** - Where minor and major facilities reduce or destroy existing vegetation, the applicant must develop a revegetation plan for the remainder of the facility site, for approval by the community development department.

**90-124- Final Reclamation** - Upon abandonment of the minor facility site, as defined by the O.G.C.C., reclamation shall be conducted in accordance with O.G.C.C. regulations.

**90-19- Gas Gathering Lines** - Gas gathering lines are considered minor facilities and are subject to regulations as such except for setback requirements.

**90-123(d)- Wildlife** - When located within CDOW high impact zone, the applicant shall consult with the state division of wildlife to obtain recommendations for appropriate site specific and cumulative impact mitigation procedures.

**90-123(d)- Roads** - Confine vehicular access to established roads except under emergency circumstances. Install locking gates.

**90-123(d)- Wildlife** - Avoid conducting drilling and construction activities during critical use periods. Avoid conducting onsite operation and maintenance activities during critical use hours; consult process with local CDOW.