

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

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

**LOCAL GOVERNMENTAL ORGANIZATIONS
COMPILATION OF ADDITIONAL COMMENTS AND PROPOSED CONSENSUS LANGUAGE
REGARDING CLARIFIED PROPOSED RULES AND ALTERNATE LANGUAGE**

COMES NOW the Board of County Commissioners of the County of Gunnison, Colorado ("Gunnison County"), by and through David Baumgarten, County Attorney, and, pursuant to order of the Oil and Gas Conservation Commission, respectfully submits the compilation of local government additional comments as follows:

1. Gunnison County
2. Las Animas County
3. La Plata County (*Gunnison County and NWCCOG join with La Plata County in its 521, 201 and 602 proposal.)
4. San Miguel County
5. Weld County
6. Yuma County

The body of filings does not exceed 25 pages, not including a cover page for each County for clarity, appendices, or attachments.

Respectfully submitted this 29th day of July, 2008.

**BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF GUNNISON, COLORADO**

By: /s/ David Baumgarten
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GUNNISON COUNTY

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

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

**BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, COLORADO
ADDITIONAL COMMENTS AND PROPOSED CONSENSUS LANGUAGE REGARDING CLARIFIED
PROPOSED RULES AND ALTERNATE LANGUAGE**

The Board of County Commissioners of the County of Gunnison, Colorado (“Gunnison County”), by and through David Baumgarten, County Attorney, respectfully submits its Additional Comments Regarding Second Recommended Clarifications and Alternate Language.

Please note that these comments include identification of other parties that join in the comments and proposed consensus language.

RULE 206b. COMPLIANCE CHECKLIST

Proposed Rule 206 b. Compliance Checklist, by definition, excludes Gunnison County from what in an earlier draft had been characterized as the “Piceance Geologic Basin.” There has not been evidence presented to support excluding Gunnison County from the protections identified in Rule 206b to three other named counties (i.e. Garfield, Mesa and Rio Blanco). Delta County and Pitkin County also have been excluded by the May 18 clarification.

Gunnison County has joined with other parties to support a consensus recommendation that the requirements of Rule 206b be applied statewide. If that consensus recommendation is not accepted by the COGCC, Gunnison County strongly urges that either: a. the original scope of Rule 206b be reinstated to be the entire Piceance Geologic Basin; or b. Gunnison County expressly be included in the list of counties included in the scope of Rule 206b.

The following parties join in this proposal: **San Miguel County; Northwest Colorado Council of Governments; Saguache County; Audubon Colorado, Colorado Bowhunters Association, Colorado Mule Deer Association, Colorado Trout Unlimited, Colorado Wildlife Federation, and the National Wildlife Federation (collectively, the “Wildlife Groups”); and Colorado Environmental Coalition, Western Colorado Congress, The Wilderness Society, Colorado Mountain Club, Environment Colorado, the Wilderness Workshop, High Country Citizens Alliance, Grand Valley Citizens Alliance, Center for Native Ecosystems, and Western Slope Environmental Resource Council and Rocky Mountain Clean Air Action (collectively, the “CEC Parties”).**

RULE 216 COMPREHENSIVE DRILLING PLANS

Rule 216 presents an excellent opportunity for planning that will facilitate later permitting, address issues in a large geographic area, and will allow for mitigation of impacts in a systematic manner both over larger spaces and longer time than individual permits. At best, Comprehensive Drilling Plans will encourage multiple operators to plan together their activities.

Gunnison County regulations employ two similar regemes: 1. The Gunnison County Land Use Regulations and individual sewage disposal system regulations, Gunnison County calls them “special geographic areas” for an actual development and has had good success; and, 2. Gunnison County has statutory authority to also create Planned Unit Developments.

Because a Comprehensive Drilling Plan is intended to cover a large area, of necessity it should interface with local government planning and permitting efforts and surface owner uses. Therefore, Gunnison County suggests that draft Rule 216d(2) make mandatory, rather than at the discretion of the operator, invitation to the local government and surface owners to participate.

Gunnison County also suggests that the submittal regulations at 216c include identification of comprehensive plans and other long range planning tools adopted by the affected local governments.

Gunnison County requests that, in approving a comprehensive drilling plan, consideration be given to ensure consistency between the proposed comprehensive plan and adopted local government long range planning tools. The efficacy of this tool will depend on early, linked participation of the local government and the public.

The following parties join in this proposal: **San Miguel County; Northwest Colorado Council of Governments; Saguache County; the Wildlife Groups; the CEC Parties; Oil & Gas Accountability Project; the San Juan Citizens' Alliance; Colorado Association of Home Builders and National Association of Industrial and Office Properties; and the North Fork Ranch Landowners' Association.**

RULE 303d(3)A.i.; REQUIREMENTS FOR FORM 2A REQUIRING APPROVAL

Rule 303d(3)A.i.

The following parties have suggested that the requirements of Rule 303d(3)A.i. be applicable statewide; Gunnison County concurs with that suggestion:

If the requirements of Rule 303d(3)A.i. are not made statewide, Gunnison County affirmatively requests that, at a minimum, Gunnison County be added to the proposed list of 3 counties (Garfield, Mesa and Rio Blanco) where the form 2A requires Commission or Director approval if the proposed location will disturb more than 1 acre. A disturbance of more than 1 acre in Gunnison County will be as consequential as a similar disturbance in the 3 proposed counties. Geology, topography, climate, altitude, and remoteness of sites, all are significantly similar in all of the Piceance Basin counties.

The following parties join in this proposal: **San Miguel County; Northwest Colorado Council of Governments; Saguache County; the Wildlife Groups; and the CEC Parties.**

RULE 306; CONSULTATION

Rule 306a. Drilling Consultation With Surface Owner.

1. Gunnison County suggests that consultation should be available to a surface owner even if a surface use agreement exists; that agreement may already be dated or the subject of changed circumstances. In all cases a consultation is a good manner to accomplish reasonable accommodation.
2. Draft Rule 306a states: "consultation shall occur prior to the commencement of operations with heavy equipment upon the lands of the surface owner." Gunnison County suggests that the consultation occur earlier – pre-permit approval. All parties would benefit from an earlier consultation; and problems regarding detrimental reliance on a permit approval made without consultation would be avoided.

Rule 306b. Consultation with Local Government.

Draft Rule 306b contains the same “prior to the commencing of operations with heavy equipment” language as in Draft Rule 306a. Gunnison County suggests a pre-permit approval consultation.

Local government has only 7 days to notify the Commission and CDPHE to request a consultation. These 7 days don’t account for a weekend – or the occasional holiday – which may reduce the 7 days to 4. Within these 7 days, pursuant to Rule 214 (creating the LGD function) the LGD is obligated to distribute “all documents ... to the appropriate persons and offices” while local government is agile, we may not be that agile. Gunnison County suggests 14 days.

The following parties join in this proposal regarding Rule 306.a. and b.: **San Miguel County; Northwest Colorado Council of Governments; Saguache County; the Wildlife Groups; the CEC Parties; Oil & Gas Accountability Project; the San Juan Citizens’ Alliance; Colorado Association of Home Builders and National Association of Industrial and Office Properties; and the North Fork Ranch Landowners’ Association.**

RULE 317B; PUBLIC WATER SYSTEM SOURCE WATER ASSESSMENT AREAS

Protection of raw sources of drinking water is an issue of paramount importance to public health and safety; it is entirely appropriate that the Rules address methods to protect sources of drinking water from potential contamination by oil and gas operations.

The evolution of Draft Rule 317B from a static single zone to multiple buffers or “feathered” zones is an approach well suited for protection of sources of drinking water.

Gunnison County offers the following suggestions:

1. Rule 317B should clearly articulate a hierarchy of location for new operations, requiring that new operations be located in the external buffer unless the applicant demonstrates that location in the external buffer is technically infeasible.
2. Since the concept of a buffer is based on the travel time of contaminants over the ground surface, the originally proposed width of 500 feet for the exclusion zone should be adopted. There are numerous examples where a more protective buffer has been required for oil exploration and similar activities (i.e. activities that are treated similarly to oil and gas exploration by EPA model ordinances):
 - Grand Junction: drilling activities and fuel storage: 500-1000 feet (from stream or seep in watershed – defined to include area for 5 miles up from intake), depending on type of water body. Grand Junction PHS Ex. C at section XX-61(6).
 - Staff testimony indicates that Genesis-Palisade plan reached similar conclusion.
 - NY: petroleum storage facilities or tanks (more than 1,100 gallons) must be 500 feet from any reservoir or reservoir stem. 10NYCRR 128-3.4(b).
 - USFS (GMUG): ¼ mile from surface water intake. Grand Mesa, Uncompahgre and Gunnison national Forests Oil and Gas Leasing Final Environmental Impact Statement (1993) (describing controlled surface use stipulation at page II-36 that requires ¼ mile buffer zones), available at http://www.fs.fed.us/r2/gmug/policy/oil_gas/eis_1993/Volumel.pdf; see also, http://www.fs.fed.us/r2/gmug/policy/oil_gas/eis_1993/RecordofDecision.pdf (pages ROD-1, ROD-16 in record of decision adopting controlled surface use requirement).
 - South Carolina: all manure storage ponds must be 500 feet from ANY water of the State. S.C. CODE REGS. 61-43.100.80.A.7 (2008). Where sensitive waters involved (e.g. outstanding resource waters, or critical habitat), quarter mile is required. S.C. CODE REGS. 61-43.100.80.A.8 (2008).

3. That Draft Rule 317B.b.2.E. be redrafted to require a consultation with the water provider or effected local government at the time of application rather than post-approval, pre-commencement of operations as currently proposed.
4. That the proposed distinction in the exclusion zone between currently existing and new operations affirmatively be incorporated in Rule 317B. This distinction, with the protections and variance opportunity proposed in the draft Rule, is a logical and fair treatment of 'grandfathered' or pre-existing nonconforming uses. Gunnison County suggests that a requirement be added that the operator of grandfathered uses in the exclusion zone perform and report to the Director regular inspections and preventive maintenance. Also, Gunnison County suggests that a variance request trigger a consultation with the potentially effected water supplier and local government.
5. That the upfront exclusion of new roads, pipelines and gathering lines from the requirements of Rule 317B be redrafted so that these components are not allowed in the exclusion zone except when necessary to cross the water body or to access or connect existing wells or well approved by a variance.
6. That the Rule's protections be afforded to water supply springs or ground water wells used as public water supply. This element was in the initial draft but deleted by the second clarification.

Draft proposed language is attached as Appendix A.

The following parties join in this proposal: **San Miguel County; Northwest Colorado Council of Governments; Saguache County; the Wildlife Groups; the CEC Parties; Oil & Gas Accountability Project; the San Juan Citizens' Alliance; and the North Fork Ranch Landowners' Association.**

NEW PROPOSED RULE 317c; PROTECTION OF DOMESTIC WATER WELLS

Gunnison County suggests that the COGCC adopt a rule explicitly addressing and protecting domestic water wells existing at the time an oil and gas application is made. The COGCC has received testimony that approximately 15% of Colorado's population relies on domestic water wells for drinking water. The COGCC also has received testimony of the human health consequences of an oil and gas well or the water they provide.

Draft proposed language is attached as Appendix B.

The following parties join in this proposal: **Northwest Colorado Council of Governments; Saguache County; the Wildlife Groups; and the CEC Parties.**

RULE 508 LOCAL PUBLIC FORUMS

Rule 508 Local Public Forums codifies the opportunity for local public forums – BUT the subject matter of such forums is limited only to well density more than 1 well site per forty acres of land. If there is one thing abundantly clear from these hearings, it is that public issues and interest are much broader and complex than well density. Gunnison County urges the Commission formally to expand its valuable historic and current practice of outreach meetings, generally, and on specific issues, around the state.

The following parties join in this proposal: **Northwest Colorado Council of Governments; Saguache County; the Wildlife Groups; and the CEC Parties.**

RULE 509.a.(2).B. ; PROTESTS/INTERVENTIONS/PARTICIPATION IN ADJUDICATORY

PROCEEDINGS

Draft Rule 509 a.(2).B. requires that a local government intervening, as a matter of right, in an adjudicatory proceeding demonstrate in its filing 3 elements:

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. AND
2. That the potential impacts are not adequately addressed by the application or proposed plan. AND
3. That the potential impacts are not adequately addressed by the Commissions Rules and Regulations.

Gunnison County suggests that elements of 1 and 2 are appropriate, but a facial requirement of element 3 is not appropriate; element 3 requires the local government to demonstrate that, in all circumstances, the potential impacts are not adequately addressed. Gunnison County respectfully suggests that Rule 509.a.(2).B. iii be eliminated.

The following parties join in this request: **Northwest Colorado Council of Governments; Saguache County; the Wildlife Groups; and the CEC Parties.**

RULE 513 GEOGRAPHIC AREA PLANS

Rule 513 Geographic Area Plans, presents a beneficial opportunity for planning. Gunnison County suggests that Rule 513(3)B be modified so that notice is required to be given in a newspaper or newspaper in the geographic area and to local government designees of affected local governments; and, further, that the public hearings be conducted in – or easily accessible from – the proposed geographic area.

Gunnison County also requests that formal consideration be given to a comparison of the proposed area plan and local government comprehensive plans and other local government long range planning tools. The intent of the comparison would be to ensure – consistently between the proposed geographic area plan and existing local plans.

The following parties join in this request: **Northwest Colorado Council of Governments; Saguache County; the Wildlife Groups; and the CEC Parties.**

RULE 603a. DRILLING AND WELL SERVICING OPERATIONS AND HIGH DENSITY AREA RULES; STATEWIDE SETBACKS

Gunnison County suggests that Rule 603a. Statewide setbacks, at subparagraphs (1) and (2) mandate a setback of 400 feet rather than the currently proposed one hundred fifty feet.

The following parties join in this proposal: **San Miguel County; Northwest Colorado Council of Governments; Saguache County; the Wildlife Groups; and North Fork Ranch Landowners' Association.**

Respectfully submitted this 29th day of July, 2008.

**BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF GUNNISON, COLORADO**

By: /s/ David Baumgarten
David Baumgarten, #6050
Gunnison County Attorney

317B. PROTECTION OF PUBLIC WATER SYSTEM SOURCE WATER AREAS

a. Applicability determination. The applicability of Rules 317B.b. will be determined by reviewing the Public Water System Source Water Map located on the Commission website or by entering the longitude and latitude coordinates into the Public Water System Source Water Assessment Area Applicability Determination Tool, also located on the Commission website. Where a water body (including but not limited to a seep or spring) does not appear on the Public Water System Source Water Assessment Area Map and the Public Water System Source Water Assessment Area Applicability Determination Tool, that water body shall be added to the Source Water Map and Applicability Determination Tool, upon request by the public water supplier.

Oil and gas operations, including roads, pipelines and gathering lines that are constructed after November 1, 2008, will be subject to the requirements of Rule 317B.b. based on the zones defined in Table 1, below, for a distance of five (5) miles upstream of a public water system intake and/or diversion structure on a classified water supply segment. The drainage network must include all perennial or intermittent streams tributary to the classified water supply segment on which the intake and/or diversion structure is located. Zones shall be determined by measuring from the ordinary highwater line of the bank nearest to the proposed oil and gas operation. This table does not apply to bottomhole locations within the exclusion zone if drilled from a surface location outside the exclusion zone.

Table 1. Zones Associated With Oil And Gas Operations.

ZONE	PERENNIAL OR INTERMITTENT STREAMS (ft)
Exclusion	0 – 500
Intermediate Buffer	500 – 1,000
External Buffer	1,000 – 2,640

b. New oil and gas operations located in a Public Water System Source Water Area.

(1) Consultation with effected water provider and effected local government. The applicant must include, in any application for a new or expanded oil and gas operation in any of the zones defined by Table 1 and Rule 317B. a (collectively, the “Public Water System Source Water Area”):

- A. Documentation of Conduct of Consultation. Documentation that the applicant has conducted a consultation with the affected water provider and affected local government regarding potential impacts to the public drinking water; and
- B. Documentation of Substance of Consultation. Documentation of the substance of the consultation.

(2) Requirements for oil and gas operations located in the Exclusion Zone. Oil and gas operations, or any component of an oil and gas operation, constructed after November 1, 2008,

shall not be permitted within the Exclusion Zone EXCEPT:

- A. Preexisting Operations. A component of an oil and gas operation permitted before November 1, 2008 shall be allowed to be constructed in the Exclusion Zone; or
- B. Components Necessary To Cross The Stream Or To Connect Or Access Existing Wells. A component of an oil and gas operation necessary to cross the stream, or to connect or access an existing well, shall be allowed to be constructed in the Exclusion Zone, but only to the extent reasonably necessary for that purpose; or
- C. Infill Wells. A infill well, defined as a new well on an existing operation that doesn't require additional surface disturbance, for an oil and gas operation permitted before November 1, 2008 shall be allowed to be constructed in the Exclusion Zone; or
- D. Variance. A variance may be granted by the Director to allow construction in the Exclusion Zone, if, after consultation with the CDPHE, the affected water supplier and the affected local government, the operator demonstrates that:
 - a. The proposed oil and gas operation and applicable best management practices and operating procedures will result in substantially equivalent protection of drinking water quality in the subject area.
 - b. Any variance must include requirements no less stringent than those required in 317B.b.(3) Requirements for oil and gas operations located in the Intermediate Buffer Zone.
- E. All Additional Surface Disturbance at Preexisting Operations In The Exclusion Zone. All new construction or expanded operation in the Exclusion Zone shall require the operator to meet no less than all of the requirements of 317B.b.(3) Requirements for oil and gas operations in the Intermediate Buffer Zone. Nothing in this subsection E. is or shall be construed to be a limitation on the Director to impose requirements more stringent than 317B.b.(3).

(3) Requirements for oil and gas operations located in the Intermediate Buffer Zone. The following shall be required for oil and gas operations constructed after November 1, 2008 in the Intermediate Buffer Zone as defined in Table 1 for a distance of five (5) stream miles upstream of a public water system intake on a classified water supply segment:

- A. Pitless drilling systems;
- B. Flowback and stimulation fluids contained within tanks;
- C. Berms shall be constructed in compliance with Rule 603.e.(12) around all tanks;
- D. When sufficient water exists in the stream, collection of baseline water data consisting of a pre-drilling surface water sample collected immediately downgradient of the oil and gas location and follow-up surface water data consisting of a sample collected at the same location every six (6) months during drilling activities and operations, and three (3) months after the conclusion of drilling activities and operations. The sample parameters must include:
 - i. pH;
 - ii. alkalinity;
 - iii. Specific conductance;

- iv. Major cations/anions (chloride, fluoride, sulfate, sodium);
 - v. Total dissolved solids;
 - vi. BTEX/GRO/DRO;
 - vii. TPH;
 - viii. PAH's (including benzo(a)pyrene); and
 - ix. Metals (arsenic, barium, calcium, chromium, iron, magnesium, selenium).
- E. Current applicable analytical methods for drinking water must be used and analyses performed by laboratories that maintain state or national accreditation programs.
- F. Copies of all test results described above shall be provided to the Commission and the operator of the public water system within three (3) months of collecting the samples. In addition, the analytical results and surveyed sample locations shall be submitted to the Commission in an electronic data deliverable format.
- G. Notification of potentially impacted Public Water Systems and local governments prior to commencement of oil and gas operations;
- H. An emergency spill response program that includes employee training, and safety and maintenance provisions at all times of current direct contact information for any downstream public water system(s) as well as the ability to notify any such downstream public water system(s).

In the event of a spill or release, the operator shall immediately implement the emergency response procedures.

If a spill or release impacts or threatens to impact public water system, the operator shall notify the affected public water system(s) immediately following discovery of the release, and the spill or release shall be reported to the Commission in accordance with Rule 906.b.(3), and to the Environmental Release/Incident Report Hotline (1-877-518-5608) in accordance with Rule 906.b.(4).

(4) Requirements for oil and gas operations located in the External Buffer Zone. The following shall be required when oil and gas operations constructed after November 1, 2008 occur in the External Buffer Zone as defined in Table 1 for a distance of five (5) stream miles upstream of a public water system intake on a classified water supply segment:

- A. Pitless drilling systems or containment of all drilling flowback and stimulation fluids with impervious liners as provided in Rule 904;
- B. When sufficient water exists in the stream, collection of baseline surface water data consisting of a pre-drilling surface water sample collected immediately downgradient of the oil and gas location and follow-up surface water data consisting of a sample collected at the same location three (3) months after the conclusion of all drilling activities and operations. The sample parameters must include:
 - i. pH;
 - ii. alkalinity;
 - iii. Specific conductance;
 - iv. Major cations/anions (chloride, fluoride, sulfate, sodium);
 - v. Total dissolved solids;
 - vi. BTEX/GRO/DRO;
 - vii. TPH;
 - viii. PAH's (including benzo(a)pyrene); and

- ix. Metals (arsenic, barium, calcium, chromium, iron, magnesium, selenium).

Current applicable analytical methods for drinking water must be used and analyses performed by laboratories that maintain state or national accreditation programs.

Copies of all test results described above shall be provided to the Commission and the operator of the public water system within three (3) months of collecting the samples. In addition, the analytical results and surveyed sample locations shall be submitted to the Commission in an electronic data deliverable format.

- C. An emergency spill response program that includes employee training, and safety and maintenance provisions at all times of current direct contact information for any downstream public water system(s) as well as the ability to notify any such downstream public water system(s).

In the event of a spill or release, the operator shall immediately implement the emergency response procedures.

If a spill or release impacts or threatens to impact a public water system, the operator shall notify the affected public water system(s) immediately following discovery of the release, and the spill or release shall be reported to the Commission in accordance with Rule 906.b.(3), and to the Environmental Release/Incident Report Hotline (1-877-518-5608) in accordance with Rule 906.b.(4).

c. Existing oil and gas operations in Public Water System Source Areas.

(1) Existing oil and gas operations within zones specified in Table 1 shall be subject to the following requirements instead of the requirements of Rule 317B.b, provided that no increased surface disturbance associated with the operation occurs after November 1, 2008:

- A. When sufficient water exists in the stream, collection of surface water data consisting of a sample collected immediately downgradient of the oil and gas location will occur by May 1, 2009. The sample parameters must include:
 - i. pH;
 - ii. alkalinity;
 - iii. Specific conductance
 - iv. Major cations/anions (chloride, fluoride, sulfate, sodium);
 - v. Total dissolved solids;
 - vi. BTEX/GRO/DRO;
 - vii. TPH;
 - viii. PAH's (including benzo(a)pyrene); and
 - ix. Metals (arsenic, barium, calcium, chromium, iron, magnesium, selenium).

Current applicable analytical methods for drinking water must be used and analyses performed by laboratories that maintain state or national accreditation programs.

Copies of all test results described above shall be provided to the Commission and the operator of the public water system within three (3) months of collecting the samples. In addition, the analytical results and surveyed sample locations shall be submitted to the Commission in an electronic data deliverable format.

- B. An emergency spill response program that includes employee training, and safety and maintenance provisions at all times of current direct contact information for any

downstream public water system(s) as well as the ability to notify any such downstream public water system(s).

In the event of a spill or release, the operator shall immediately implement the emergency response procedures.

If a spill or release impacts or threatens to impact a public water system, the operator shall notify the affected public water system(s) immediately following discovery of the release, and the spill or release shall be reported to the Commission in accordance with Rule 906.b.(3), and to the Environmental Release/Incident Report Hotline (1-877-518-5608) in accordance with Rule 906.b.(4).

C. Appropriate best management practices will be implemented and maintained.

(2) Additional surface disturbance occurring after November 1, 2008 at existing oil and gas operations within the zones specified in Table 1 shall be subject to the requirements of Rule 317B.c.(3) instead of the requirements of Rule 317B.b where the additional disturbance is addressed in a Comprehensive Drilling Plan accepted pursuant to Rule 216, or if

- A. The additional activity at the site will not increase the existing disturbed area by more than 25 percent of the area that was disturbed prior to interim reclamation for operations occurring before November 1, 2008;
- B. The additional surface disturbance occurs in a direction away from the stream or no closer to the stream if moving away from the stream would require the surface disturbance to occur on a steep slope in an area of high soil erosion potential; and
- C. The additional surface disturbance occurs for the purpose of facilitating directional or "pad" drilling, or would otherwise result in less cumulative surface disturbance than if the additional activity were located further from the stream.

(3) Where the provisions of Rule 317B.c.(2) apply, the following zone requirements shall apply:

- A. For all zones, the requirements of Rule 317B.c.(1).
- B. For external and intermediate buffer zones: pitless drilling systems or containment of all drilling, flowback and stimulation fluids with impervious liners, as provided in Rule 904;
- C. For exclusion zones:
 - i. Pitless drilling systems;
 - ii. Flowback and stimulation fluids contained within tanks;
 - iii. Berms shall be constructed in compliance with Rule 603.e.(12) around all tanks;
 - iv. Notification of potentially impacted Public Water Systems and local governments prior to the commencement of new surface disturbing activities at the site.

317 C. PROTECTION OF DOMESTIC WATER WELLS.

All wells drilled for oil or gas to a common source of supply shall be set back no less than 500 feet from any existing domestic water well.

LAS ANIMAS COUNTY

**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)	

LAS ANIMAS COUNTY’S ADDITIONAL SUBMITTAL

Las Animas County (“LAC”) hereby files its Additional Submittal in the above-styled matter in accordance with the Order Regarding Additional Submittals entered by the Oil and Gas Conservation Commission of the State of Colorado (“COGCC”).

I. Land Use Issues.

Like the other counties that are parties to this rule making proceeding, LAC continues to be concerned that the breadth of the proposed rules impermissibly infringe on counties’ local land use authority. For example, counties have the authority to regulate issues such as visual impacts and mitigation plans, wildlife, roads and access, and weed control as land use issues.¹ However, many of the proposed rules attempt to regulate these areas. *See, for example,* Proposed Rules 306(a)(4)(visual impacts); 500(visual impacts); 804(visual impacts); 1002(e)(4)(access roads); 1003(f)(weed control); and 1200 *et seq.* (wildlife).²

It was suggested during the testimony provided regarding Rule 521 that there are two ways in which the COGCC can recognize the counties’ land use authority: on the “front end” or on the “back end.” That is, on the front end, the COGCC can decline to enact those rules that infringe upon the counties’ land use authority. The alternative would be to try to address the issue on the back end through a mechanism such as Rule 521 regarding memorandums of agreement. LAC’s position is that this issue needs to be addressed on the front end. As mentioned in its Prehearing Statement and again during its testimony, LAC does not believe Rule 521 addresses the issue. By their nature, memorandums of agreement must be discretionary. If an agreement is not reached, there will be confusion as to which rules govern in the case of a conflict.

In an effort to address any potential conflict, several counties have suggested “floor/ceiling” language in which the COGCC’s rules would provide a “floor” and counties

¹ See C.R.S. 29-20-104 defining the broad categories of counties authority regarding land use. LAC believes the issues listed herein fall within these categories. However, this list is not intended to be all inclusive, and LAC believes there are additional areas of land use over which counties’ have authority.

² There are other existing COGCC rules that also touch on these areas. This is simply a list of some of the proposed amendments that touch on land use issues.

could enact stricter or “ceiling” standards. LAC does not support this language. First, the COGCC should not be enacting rules that attempt to regulate the line between the COGCC’s and the counties’ respective authorities. Second, a “floor/ceiling” standard may not reflect an accurate statement of the law. Third, such language does not eliminate the basic problem: the enabling statute under which the COGCC is promulgating its amended rules does not authorize the COGCC to preempt the counties’ land use authority.

Therefore, LAC requests that the COGCC review the proposed amendments and decline to adopt those that infringe on the counties’ land use authority.

2. Wildlife.

It has been suggested that LAC should not be concerned regarding the proposed timing restrictions regarding wildlife (the 1200 series) because LAC has been exempted from a couple of the timing restrictions. However, LAC will still be affected by timing restrictions placed on elk production and bighorn winter range.³

LAC addresses wildlife in its Oil and Gas Regulations (*see* section 2.3(c)). These Regulations provide for consultation with the Colorado Division of Wildlife under certain circumstances and for mitigation measures. These Regulations have worked well in LAC, and there is no need for the proposed timing restrictions.

The June 18, 2008 amendments to the proposed rules mitigated some of the harsh outcome regarding the timing restrictions. However, the timing restrictions are still worrisome in that they are the default. That is, if an operator is unable to achieve any of the standards set forth in proposed Rule 1208(a-d), then the timing restrictions would prevail. While this outcome is tempered by subsection (g) limiting the window to three months, this is still a rather onerous outcome that may be unnecessary to protect wildlife interests.

3. LAC Regulations Regarding Safety.

During the course of these proceedings, the COGCC questioned whether LAC has any regulations in place regarding safety. LAC would like to point the COGCC to LAC’s Oil and Gas Regulations supplied with LAC’s Prehearing Statement. In its regulations, LAC addresses safety through specific requirements such as emergency preparedness plans, security around facilities through fencing, secured valves, generally accepted safety practices, and access for emergency personnel and vehicles. The emergency preparedness plans required by LAC may include response plans for explosions, fires, gas or water pipeline leaks or ruptures, toxic gas emissions, or hazardous material vehicle accidents or spills. The safety of its citizens is an utmost concern for LAC, and that is why LAC has seen fit to enact and enforce such safety regulations.

³ This assumes that the staff’s June 18, 2008 amendments are used. If a previous version is used, LAC would also be affected by the restrictions regarding mountain plover nesting.

Respectfully Submitted,

/s/ Mary D Newnam

Mary D. Newnam
Attorney for Las Animas County

LA PLATA COUNTY

La Plata County Final Argument Concerning Preemption and Proposed Alternate Language on Rule 521 and Rule 201

As was noted in the testimony of the above-referenced entities, local governments across the State of Colorado have expressed the uniform concern that the Draft Rules not preempt local land use authority over oil and gas operations. H.B. 1298 and H.B. 1341 both require this Commission to ensure that its new rules do not impermissibly preempt local government land use authority. The lengthy legal arguments underlying this concern are set forth in the local governments' Motion Addressing Ultra Vires and Possible Preemption Concerns and in the local governments' response to CPA's Motion to Delete Draft Rule 521 or Bifurcate.

To summarize these points, the Commission is required by the General Assembly to enact regulations addressing impacts of oil and gas operations to wildlife and the environment. The Counties respectfully submit, however, that the Draft Rules go beyond this legislative mandate and, as drafted, are an impermissible attempt to regulate the land use aspects of oil and gas operations in a manner that fails to recognize the authority of local governments. Local governments have been expressly granted authority and jurisdiction to regulate the land use aspects of oil and gas operations. Local government land use authority over oil and gas operations dates back to the early 1900s. The original enactment of the Oil and Gas Conservation Act ("the Act") did not preempt county land use regulatory authority. *Board of County Commissioners, La Plata County v. Bowen/Edwards*, 830 P.2d 1045, 1058 (Colo. 1992). In subsequent amendments to the Act, the legislature has continued to make it clear that it does not intend for the Act to expressly or impliedly preempt county land use regulatory authority over oil and gas operations. *See Motion Addressing Preemption and Ultra Vires* (paragraphs 5 and 6).

In its Motion, the Counties urged this Commission to remedy the problem associated with the Commission's land use oriented draft regulations by the creation and expansion of new Rule 521, Memorandum of Agreement with Local Governments, which Rule relates to the coordination and harmonization of state and local government rules and relations. The state and local governments have express statutory authority to enter into such a relationship. During testimony and at the hearings, these local governments expressed to the State Commission that its Rules could serve as minimum standards addressing land use issues associated with oil and gas development provided, however, that the Rules do not interfere with local governments' right to impose stricter standards in their own land use regulations. This proposal comports with the provisions of C.R.S. § 30-28-123, which confirm that a county's stricter or higher land use regulations take precedent over those required by any other statute.

Also, the Counties' proposed amendment to Rule 521a1, allows the Commission to preserve its ability to impose its land use regulations in those counties where there are no local land use regulations applicable to oil and gas development. Just as important,

the proposed amendment would allow counties to apply their valid oil and gas land use without having to address a unmeritorious preemption challenges.

PROPOSED AMENDMENTS: FLOOR CEILING APPROACH

If the Commission chooses to adopt this floor-ceiling approach, the Counties submit the following language for adoption by the Commission as three new final sentences to **Rule 201**:

The Commission acknowledges that local governments have authority to regulate land use, environmental and surface aspects of oil and gas operations, that legislation and case law expressly recognize and preserve this local government authority and that the State Rules are not intended to preempt, either expressly or impliedly,, local government land use, environmental or surface regulations over oil and gas operations. Notwithstanding the foregoing, a local regulation may be preempted by operational conflict if application of the local regulation materially impedes or destroys the State interest in the effective recovery of the natural resource and protection of public health, welfare and safety, the environment and wildlife. The land use and surface regulations contained within these Rules are intended to serve as minimum statewide standards and shall be applicable in those jurisdictions where a local government has not enacted land use, environmental and surface regulations over oil and gas operations which are at least as stringent as the land use and surface regulations in these Rules..

The Counties also request that the Commission add a new second sentence in **Draft Rule 521(b)** as follows:

A local government may enact higher or more stringent regulations governing land use, environmental and surface aspects of oil and gas operations than those as set forth in these Rules. A memorandum of agreement shall acknowledge that any such local regulations are not preempted by any land use or surface regulations contained within these Rules.

ALTERNATE TO PROPOSED FLOOR-CEILING AMENDMENTS

If the Commission decides to not adopt the floor-ceiling approach, the Counties submit the following non-preemption language for adoption by the Commission as a new final two sentences to **Rule 201**.

The Commission acknowledges that local governments have authority to regulate land use, environmental and surface aspects of oil and gas operations, that legislation and case law expressly recognize and preserve this local government authority and that the State Rules are not intended

to preempt, either expressly or impliedly,, local government land use, environmental or surface regulations over oil and gas operations. Notwithstanding the foregoing, a local regulation may be preempted by operational conflict if application of the local regulation materially impedes or destroys the State interest in the effective recovery of the natural resource and protection of public health, welfare and safety, the environment and wildlife.

PROPOSED AMENDMENTS: NO INTENT TO PREEMPT

Most importantly, the Counties request this Commission to address a glaring problem with the current Draft Rules. The Draft does not ensure that the Rules, as a whole, do not preempt local land use regulations. Presently, this non-preemption language is buried in Rule 521(e) and, as drafted, only establishes that the specific Rule 521, Memorandum of Agreement, will not negate local authority. Irrespective of whether the Commission adopts the floor/ceiling approach, the Counties request that the Commission amend the second sentence to **Draft Rule 521(e)** as follows:

Nothing in this section or in these Rules shall alter, impair, or negate the authority of local governments to regulate land use and surface aspects of ~~related to~~ oil and gas operations.

This amendment will comport the rules with this Commission's legislative mandate to ensure that the Rules are not construed as a whole to negate local land use authority.

PROPOSED AMENDMENTS: OPERATIONAL CONFLICTS

The Counties request that the Commission allow the foregoing provisions to address the interrelationship between the Commission's regulations and local government authority and, accordingly, request that the Commission delete **Rule 303(a)(2)**, Operational Conflicts.

PROPOSED RULE 602(b)-THIRD PARAGRAPH

All applicants and operators shall make and keep a chemical inventory record, by well or oil and gas facility. In addition to the inventory, the records shall include material safety data sheets, product information sheets, and other records necessary to describe the chemical constituents of each product listed in the inventory. The inventory shall include a completed list of chemical constituents regardless of whether such constituents are entitled to protection under state or federal law, including C.R.S § 24-72-204, as a trade secret, privileged information, or confidential commercial, financial, geological, or geophysical data. Entities maintaining inventory records under this section shall update these inventory records bi-monthly throughout the life of the well or oil and gas facility. These inventory records must be maintained in a readily retrievable and reviewable format. The Commission may obtain information provided in a chemical inventory record upon written request to the applicant or operator. Copies of said reports required by the Commission shall be kept on file and available for inspection for the life of the applicable well or oil and gas facility. Upon the Commission director's written request for information required to be maintained under this section, the record-keeping entity shall supply the requested information within three (3) business days in a format readily-reviewable by the director.

Where, however, the operator of a well or oil and gas facility only includes the chemical name and vendor because the information about chemical constituents is proprietary to a third party, the operator shall, upon request, immediately provide a full and complete disclosure of all chemical constituents regardless of whether such constituents are entitled to protection under state or federal law, including C.R.S. § 24-72-204, as a trade secret, privileged information, or confidential commercial, financial geological, or geophysical data to the requesting emergency medical professionals in any trauma I, II or III hospital unit within the County. Any emergency medical professionals and hospital units receiving such information shall retain the information in a manner consistent with its public disclosure status under federal and state law or regulation.

SAN MIGUEL COUNTY

**COMMENTS OF THE BOARD OF COUNTY COMMISSIONERS OF SAN MIGUEL
COUNTY REGARDING THE COLORADO OIL AND GAS CONSERVATION
COMMISSION STAFF'S SECOND RECOMMENDED CLARIFICATIONS AND
ALTERNATIVE LANGUAGE FOR THE DRAFT RULES
PUBLISHED APRIL 10, 2008 (31 COLO. REG. 4)**

1. 100 Series – Definitions:

“Reference Area”: Definition should specify a minimum and maximum size for a parcel designated as a “Reference Area”. The definition should include minimum standards or criteria for determining if the area is proximate and similar to a proposed oil and gas location in terms of vegetative potential and management. Consideration should be given to specifying a maximum distance between the Reference Area and the proposed oil and gas location. Similarity of vegetation potential should be defined in terms of the specific types of vegetation and their extent, in terms of both plant density and diversity. Since the proposed Rules use 80% as the standard for site reclamation, consideration should be given to using the same standard for determining the similarity of a Reference Area to a proposed location in terms of the types and extent of vegetation. The COGCC should have the authority to determine if a proposed Reference Area satisfies the standards in the definition as being representative of the desired final reclamation condition.

2. 200 Series – General Rules:

206 b. Compliance Checklist: San Miguel County endorses the comments of Gunnison County.

216. Comprehensive Drilling Plans: San Miguel County endorses the comments of Gunnison County.

3. 300 Series – Drilling, Development, Producing and Abandonment

306. Consultation: San Miguel County endorses the comments of Gunnison County, as well as the comment of Danielle Johnston, CDOW: **303. d (2) F (ii) cc. Documentation of the total percent plant cover for plants in the following categories: native, non-native non-noxious, and non-native noxious. Percent cover shall be measured or estimated using a valid and reliable method, such as point-intercept. Sufficient data shall be collected to allow the operator to estimate plant cover to within 10% of the true mean with 80% confidence.**

317B. Protection of Public Water System Source Water Areas: San Miguel County endorses the alternative language that Gunnison County has proposed. However, Infill Wells located within an Exclusion Zone should require obtaining a variance.

317C. Protection of Domestic Water Wells: San Miguel County endorses the language that Gunnison County has proposed.

342. Studies: San Miguel County endorses the comments and alternative language that the coalition of Conservation Groups has proposed.

4. 500 Series – Rules of Practice and Procedure

503(b)(8). All Other Proceedings Commenced by Filing an Application: San Miguel County endorses the Joint Proposal submitted by the environmental/wildlife group coalition including the CEC Alternative proposal.

513. Geographic Area Plans: San Miguel County endorses the Consensus Alternative Proposals submitted by the Conservation Groups.

521. Memoranda of Agreement with Local Governments: San Miguel County endorses La Plata County’s “Final Argument Concerning Preemption and Proposed Alternate Language on Rule 521 and Rule 201.

528. a. Conduct of Adjudicatory Hearings, Contested Applications: San Miguel County endorses the 7/23/08 iteration submitted by the environmental/wildlife group coalition.

5. 600 Series – Safety Regulations

603 a. Statewide Setbacks: San Miguel County endorses the comments of Gunnison County, that stipulate a 400’ minimum setback from all wellheads and related production facilities, regardless of the number of wells located on a single pad/well site.

6. 700 Series – Financial Assurance and Environmental Response Fund

San Miguel County endorses the following comments of Danielle Johnston, CDOW:

706. Soil protection and plugging and abandonment.

Prior to commencing the drilling of a well, or prior to the purchase of any well, an operator shall provide financial assurance to the Commission to ensure the protection of the soil and the proper plugging and abandonment of the well in accordance with the 300 Series of drilling regulations, the 900 Series of E&P waste management, the 1000 Series of reclamation regulations, and the 1100 Series of flowline regulations. The financial assurance required by this section shall be in the amount of ~~five~~ten thousand dollars (\$~~5~~10,000) per well for wells less than 3000 feet in total measured depth and twenty thousand dollars (\$20,000) per well for wells greater than or equal to 3000 feet in total measured depth. In lieu of such individual amount, an operator may submit statewide blanket financial assurance in the amount of ~~thirty~~sixty thousand dollars (\$~~3~~60,000) for the drilling and operation of less than one hundred (100) wells, or one hundred thousand dollars (\$100,000) for the drilling and operation of one hundred (100) or more wells. All oil and gas wells, excluding domestic gas wells, with financial assurance posted prior to

July 1, 2008, as well as all new domestic gas wells, must have financial assurances in compliance with this section in place on July 1, 2009.

In addition to the financial assurance described in the first paragraph of this Rule, an operator shall, prior to commencing drilling, or the purchase, of any well, post a cash bond for the benefit of the Commission (the “interim reclamation bond”) to ensure the proper and timely completion of interim reclamation under Rule 1003, which bond shall be in the amount of ten thousand dollars (\$10,000) per acre of area disturbed. Operators shall also post a cash bond in the amount of ten thousand dollars (\$10,000) per acre of area disturbed prior to installation of flow lines and gathering lines

Rule 709.c. If an operator's financial assurance (other than an interim reclamation bond) is called or foreclosed by the Commission, such operator's Certificates of Clearance, Form 10, are forthwith suspended and no sales of gas or oil shall be allowed, except as may be allowed by the Commission order, until such time as the operator's financial assurance has been replaced or restored.

709.d. If, five years after commencement of drilling, an operator is failing to make reasonable progress toward completion of the obligations required under Rule 1003 for interim reclamation, the Director on his own initiative, or upon request of the surface owner, may undertake to expend funds to achieve compliance with the Rule 1003 standards, and shall make application to the Commission for an order calling or foreclosing the operator's interim reclamation bond.

7. 800 Series – Aesthetic and Noise Control Regulations

805 Odors and Dust: San Miguel County reiterates its earlier Final Responsive Prehearing Statement Comments that the requirements in (2) Production Equipment and Operations should be applicable beyond Garfield, Mesa, and Rio Blanco counties, to such facilities located anywhere in the State where odor problems associated with oil and gas facilities have been documented, as well as other counties located in the Piceance Basin, such as Gunnison. San Miguel County endorses the Consensus Alternate Proposals submitted by the Conservation Groups, since they appear to be consistent with the county's proposal.

7. 1000 Series – Reclamation Regulations

1001 Introduction, c. Surface owner waiver of 1000 Series Rules: The BOCC supports the revisions set forth in the Second Clarification that a surface owner agreement does not serve as a waiver of certain subsection of Rule 1002 pertaining to site preparation and stabilization. However, it remains the BOCC's considered position that the Rules should not contain the implied presumption that a surface use agreement serves as a waiver to certain sections of Rules 1002, 1003, and 1004. Section 34-60-106(3.5), C.R.S., of the Oil and Gas Conservation Act, provides that for split estates, “The commission shall require the furnishing of reasonable security with the Commission to restore the condition of the land as nearly as is possible to its condition at the beginning of the lease and in accordance with owner of the surface lands so leased”. This statutory provision

indicates that the oil and gas operator has at least the minimum duty to restore the affected land to its preexisting condition, and that additional site reclamation may be required through the surface use agreement with owner of the surface estate.

1003 Interim Reclamation e. Restoration and revegetation (3) Interim Reclamation Notice, Form 4: For each photograph taken pursuant to this Rule that depicts a horizontal view, a vertically oriented photograph depicting vegetation height, density, and diversity, should also be required.

San Miguel County also endorses the comments of the CDOW, prepared by Danielle Johnston, regarding the provisions in proposed Rule 1003, pertaining to site reclamation, as set forth herein below:

1003 Interim Reclamation, e. **Restoration and revegetation.** When a well is completed for production, all disturbed areas no longer reasonably needed for production operations or for subsequent drilling operations~~needed~~ will be reseeded and revegetated as soon as practicable. Reseeding of disturbed areas shall occur immediately after disturbed areas have been graded to return contours as nearly as practical to their original relative positions, unless extenuating circumstances are present. In any event, seeding shall be completed within thirty (30) days after completion of grading.

- (1) **Revegetation of crop lands.** All segregated soil horizons removed from crop lands shall be replaced to their original relative positions and contour, and shall be tilled adequately to re-establish a proper seedbed. The area shall be treated if necessary and practicable to prevent invasion of undesirable species and noxious weeds, and to control erosion. Any perennial forage crops that were present before disturbance shall be re-established to the same plant density as undisturbed adjacent cropland, unless otherwise agreed by the surface owner.
- (2) **Revegetation of non-crop lands.** All segregated soil horizons removed from non-crop lands shall be replaced to their original relative positions and contour as near as practicable to achieve erosion control and longterm stability, and shall be tilled adequately in order to establish a proper seedbed. The disturbed area then shall be reseeded in the first favorable season.

Interim reclamation of all disturbed areas no longer in use shall be considered complete when all ground surface disturbing activities at the site have been completed, and all disturbed areas have been either **built on, compacted, covered, paved, or otherwise stabilized in such a way as to permanently prevent erosion, or when all of the following criteria have been met:**

(i). A uniform vegetative cover has been established **with total non-noxious percent plant cover an individual plant density of at least seventy-eighty (7080) percent of reference area levels.** Non-noxious plant cover is defined as the vertical projection of non-noxious plant canopies (including herbaceous and shrub species) when viewed from above. Non-noxious plant cover shall be measured or estimated using a valid and reliable method, such as point-intercept. Sufficient

data shall be collected to allow the operator to estimate the mean total non-noxious plant cover to within 10% of the true mean with 80% confidence.

(ii) Vegetative cover is such that reference area forb, shrub, and grass cover is expected to develop through plant successional processes. Expectation of plant succession shall be deemed adequate when the number of species having between three (3) and fifty (50) percent of relative plant cover is at least half that of the reference area. (Appendix R-1)

(iii) The total cover of noxious weeds (including species designated as “undesirable” by local government) is no greater than that which exist in the reference area. ~~or equivalent permanent physical erosion methods have been employed.~~ Re-seeding alone is not sufficient.

Areas that cannot be revegetated because they are reasonably needed for production operations shall be maintained in compliance with Rule 1002.f.2.

- (3) Cover of non-crop lands. In addition to the revegetation requirement, interim reclamation on non-crop lands shall not be considered complete until total cover of the soil surface (including live and dead vegetation, and stones) is at least ninety (90) percent of that in the reference area.
- (4) Data collection for non-crop lands. For purposes of assessing completion of interim reclamation on non-crop lands, until the Form 4 completion notice is filed, the operator shall collect periodic field data sufficient to demonstrate (a) that revegetation and native plant cover are progressing toward a condition comparable to that of the reference area, and (b) whether final stabilization has been achieved for purposes of terminating coverage under the Colorado Discharge Permit System permit for stormwater discharges associated with construction activity.
- (35) Interim reclamation completion notice, Form 4. The operator shall submit a Sundry Notice, Form 4, which demonstrates that interim reclamation has been completed. This notice shall include field data and photographs sufficient to demonstrate that the requirements of this Rule have been met. At a minimum, the notice shall describes the interim reclamation procedures, document the revegetation process and plant cover measurements made, and any associated mitigation measures performed, and any changes, if applicable in the landowner’s designated final land use. The document shall include; at least four (4) photographs taken from a fixed and monumented location during the growing season facing each cardinal direction which document illustrate the success of the interim reclamation, one (1) photograph which documents the total cover of live perennial vegetation, four (4) photographs taken from a fixed and monumented location during the growing season facing each cardinal direction within the reference area, one (1) photograph which documents the total cover of live perennial vegetation of the reference area, a graph comparing the total percent cover of non-noxious vegetation between the reclamation area and the reference area, and a graph

comparing the diversity of vegetation between the reclamation area and the reference area. Each photograph shall be identified by date taken, well name, GPS location coordinates, and direction of view. Photographs shall be arranged and formatted so as to facilitate a comparison of the reclamation area and reference area. If, after reviewing the Form 4 notice, the Director concludes that the requirements of this Rule for completion of interim reclamation have been met, the portion of the interim reclamation bond corresponding to the acreage reclaimed pursuant to Rule 1003.e.(1) – (3) for that well shall be released. The Director shall have the authority to make an on-site inspection, or require any additional information deemed necessary, prior to determining whether interim reclamation standards have been met.

If, by the end of the fifth growing season after conclusion of drilling and completion operations, the Director has not determined that interim reclamation standards have been met, the operator shall submit to the Director a plan for completing interim reclamation. The plan must describe how interim reclamation will be completed within seven years after conclusion of drilling and completion operations, and the operator shall be required to implement such plan.

8. 1200 Series – Protection of Wildlife Resources

1208. Sensitive Wildlife Habitat: San Miguel County supports the revised language in the Second Clarification that deletes the exception for gathering lines from the requirements of this Rule. Due to the relatively large amount of area that can be disturbed, the construction of gathering line systems has the potential to create significant adverse impacts on sensitive wildlife habitat.

1211. Minimizing Impacts Through Orders or Rules Regarding Drilling Units, Agreements for Development, or Unit Operations: San Miguel County endorses the language in the Consensus Alternate Proposal submitted by the Conservation Groups.

WELD COUNTY

STATEMENT BY WELD COUNTY

Weld County submits in this writing no comments regarding the OGCC Staff's June 18, 2008, clarifications and amendments to the Draft Rules, or to testimony thus far given on the Draft Rules. The Draft Rules appear to be focused on issues and activity primarily occurring in the Piceance Basin.

On July 17, 2008, Weld County, several oil and gas operators, and the American Royalty Council provided testimony regarding their Weld County Coalition Consensus Alternate Proposal. It offers several alternate rules to capitalize on the success of Rule 318A in the Greater Wattenberg Area ("GWA"), which has already been recognized in the record as a Geographic Area Plan. The parties had further discussions with Director Neslin and OGCC Staff on July 24, 2008.

The GWA is a mature oil field where present development is largely concentrated on infill wells. The GWA has established patterns of spacing and well location, surface ownership, road infrastructure and regulatory relationships. The consideration of rules specific to the GWA is appropriate and necessary.

Therefore, Weld County requests that the OGCC approve the Weld County Coalition Consensus Alternate Proposal as modified pursuant to negotiations with the OGCC Staff.

YUMA COUNTY

STATEMENT BY YUMA COUNTY

Yuma County submits in this writing the following comments regarding the OGCC Staff's June 18, 2008, clarifications and amendments to the Draft Rules, and to testimony thus far given on the Draft Rules.

The Draft Rules appear to be focused on issues and activity primarily occurring in the Piceance Basin. On July 17, 2008, Yuma County provided testimony regarding their Yuma County Coalition Consensus Alternate Proposal. This proposal offers several alternate rules to capitalize on the success of Rule 318B in the Eastern DJ Basin, which has already been recognized in the record as a Geographic Area Plan. Attached please find the Revised Yuma County Coalition Consensus Alternative Proposal along with letters of support. This revised proposal contains additional language to strengthen both Rule 318B and the concerns of the private land owners of Yuma County and other interests in northeast Colorado.

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of July, 2008 I mailed via UPS Overnight Delivery, one original with fifteen (15) 3-hole punched copies, of the above and foregoing **LOCAL GOVERNMENTAL ORGANIZATIONS COMPILATION OF ADDITIONAL COMMENTS AND PROPOSED CONSENSUS LANGUAGE REGARDING CLARIFIED PROPOSED RULES AND ALTERNATE LANGUAGE** to the following:

Patricia Beaver, Hearing Manager
Docket No. 0803-RM-02
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/s/ Brenda Wiseman
Signature of Person Certifying Service

I further hereby certify that on this 29th day of July, 2008 I emailed or mailed a true and correct copy of the above and foregoing **LOCAL GOVERNMENTAL ORGANIZATIONS COMPILATION OF ADDITIONAL COMMENTS AND PROPOSED CONSENSUS LANGUAGE REGARDING CLARIFIED PROPOSED RULES AND ALTERNATE LANGUAGE** to the following parties:

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