

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

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

AMENDED CONSENSUS ALTERNATIVE FOR YUMA COUNTY

COMES NOW, Consensus Coalition and submits this CONSENSUS ALTERNATIVE FOR YUMA COUNTY, Colorado and as grounds therefore, states the following:

Statement of Basis and Purpose

Coalition Parties

The Yuma County Coalition consists of the following parties Rosewood Resources, Inc., (hereinafter Rosewood), Berry Petroleum Corporation, (hereinafter “Berry”), Noble Energy (“Noble”), and Yuma County. Other parties that have joined the Yuma County Coalition are: Mountain Petroleum Corporation, Diamond Operating, Inc., Petron Development Company, Washington County, Phillips County, City of Wray, Wray School District RD-2. The coalition believes the record does not demonstrate a need for additional regulations in Yuma County or northeastern Colorado.¹ Further, this area is already covered by a specific rule that considered the unique development scenario in this region.

Eastern DJ Development

The Eastern DJ Basin development is characterized by shallow depth, lower costs and correspondingly lower production. Because of the lower cost/lower production profile, development in this region is susceptible to regulatory changes that increase the costs of development. Statewide application of similar rules disproportionately impact lower cost wells on a percentage basis. As a result, the proposed rules could significantly discourage investment in Niobrara development in Yuma County.

In Yuma County and the eastern DJ Niobrara development, existing rule 318B has worked to address many concerns in that area. Staff testimony acknowledges that geographic area plans are analogous to those in Northeastern Colorado through rules 318A and 318B which have worked so successfully. See Testimony of Thomas Kerr, Page 16 (analogizing Draft Rule 513 (Geographic Area Plans) to both 318A and 318B). As a result, Yuma County and the businesses and operators herein request that the rules reflect the unique nature of development in this region.

The record contains no testimony about identified problems in Yuma County. Under the proposed rules there are no changes to Rule 318B except as it relates to permitting, consultation

¹ The parties to this coalition do not in anyway suggest that the record demonstrates a need for additional regulations in any other region of Colorado. The parties reserve all of their rights and objections to the proposed rules as they apply to other regions and basins.

and wildlife issues. The application of these changes will make development in Yuma County more expensive for operators resulting in lower investments in the region although the degree to which is uncertain at this time. To avoid this uncertainty, we are asking for special consideration for this part of Colorado given that the evidence in the record contains no information about Yuma County that demonstrate a need to make development here more restrictive.

In short, the Yuma County Coalition would like the existing rules to stay in effect since there is no evidence of a problem as the existing rules are applied to Yuma County. The changes noted below address needed problems within the context of these rules.

Rule 300 Series

The Rule 300 series is a tremendous burden to producers in Yuma County and will yield little tangible results on the ground in this region. Natural gas production in Yuma County is typically characterized by private landownership of both the mineral estate and the surface. In addition, the land where drilling takes place is typically used for agriculture purposes wherein, thus already disturbed by existing agricultural operations.

Notice under Rule 305 also complicates the development by creating conflicts among surface owners. The existing requirements for surface owner notification provided by the Oil and Gas Conservation Act are perfectly adequate to provide notice in this low population area.

The consultation process is also unduly burdensome given the lack of split estate and the predominance of agricultural operations in this area.

All Commission efforts should mitigate surface owner impacts and be consistent with the terms of existing oil and gas leases (OGLs) and surface use agreements (SUAs) in place on the surface owner's property or contingent upon the surface owner's express, written consent. No person shall have access to the surface owner's property without express written consent for any purpose.

In addition, the provisions of Rule 318B should be expanded to include the entire Niobrara natural gas areas of northeast Colorado including Yuma, Phillips and Washington counties.

Rule 800 Series

The visual mitigation, odors and fugitive dust provisions are a problem for Yuma County as well. This rural area of northeastern Colorado is characterized by many dirt roads, and ongoing agricultural activities that contribute to dust. In addition, due to the multitude of existing roads and the agricultural profile of Yuma County, access roads for oil and gas are much shorter than other areas in the state.

Further, with several thousand wells in the Eastern DJ with 16 wells per section allowed under Rule 318B– the local community is familiar with oil and gas operations out here. Further the agricultural equipment in place in many fields are equally intrusive to the view. Therefore, the need for painting of tanks is unnecessary.

In addition, the odor issues are relatively minor since the wells are drilled and completed in less than 36 hour typically.

Rule 900 Series

The provisions pertaining to pits and secondary containment will be disproportionately burdensome for operators in northeast Colorado due to the lower production levels of these wells. We have included additional language for Rule 904 to address this issue in order to minimize the impact to producers in northeast Colorado.

Rule 1200 Series

The 1200 series of rules regarding wildlife resources are generally inappropriate for the D-J Basin. The rules should be altered with respect to timing limitations, as noted below, such that the oil and gas industry should not be required to protect prairie dog colonies which the draft rules recognize as having a high tolerance for developed areas. Further, there is no recognition of the private property rights of the surface owners upon whose land the operator is required to conduct the survey. The same exception for the GWA is noted for the restricted surface occupancy areas in 1209. The rules should also be altered to establish a section that would allow operators to mitigate the effects of oil and gas operations on wildlife resources or through some sort of alternate arrangement. Finally, the blanket, 300-foot setback from the ordinary high water mark of any water body should also be tailored to address different conditions in different localities.

Presentation of Consensus Alternate Proposal

The Yuma County Consensus Alternate Proposal covers several rules, however, a piecemeal presentation of the proposal does not make intuitive sense because the Coalition members are relatively diverse. As a result, Yuma County intends to present this Consensus Alternate Proposal to the Commission but reserves the right to have other Coalition members available to jointly present and answer Commission questions. We believe this will be the most effective way to present this Alternate Proposal to the Commission.

Consensus Alternate Proposal

303. REQUIREMENTS FOR FORM 2, APPLICATION FOR PERMIT-TO-DRILL, DEEPEN, RE-ENTER, OR RECOMPLETE, AND OPERATE; FORM 2A, OIL AND GAS LOCATION ASSESSMENT.

a. FORM 2. APPLICATION FOR PERMIT-TO-DRILL, DEEPEN, RE-ENTER, OR RECOMPLETE, AND OPERATE.

(1) **Approval by Director.** Before any person shall commence operations for the drilling or reentry of any well, such person shall file with the Director an application on Form 2 for a Permit-to-Drill, pay a filing and service fee established by the Commission (see Appendix III), and obtain the Director's approval, subject to Rule 303.m.1, before commencement of operations with heavy equipment.

...

(1) A completed Oil and Gas Location Assessment, Form 2A, shall be submitted for any new oil and gas location, except gathering lines, as set forth below. These provisions shall not apply to projects that are subject to regulation by the U.S. Department of Transportation or have received approval of the Federal Energy Regulatory Commission.

(2) The requirement for submittal of a Form 2A shall not apply to ancillary facilities located within any area subject to Rule 318A or 318B. Any oil and gas location subject to Rule 318B may submit a modified Form 2A. The Modified Form 2A requires the attachment of:

a. a minimum of two (2) color photographs; one (1) of the staked location and one (1) of the existing or proposed access road. Each photograph shall be identified by: date taken, well name, location and direction of view.

b. a current 8½" by 11" scaled drawing of the entire section(s) containing the proposed well location with the following minimum information:

(1) Dimensions on adjacent exterior section lines sufficient to completely describe the quarter section containing the proposed well shall be indicated. If dimensions are not field measured, state how the dimensions were determined.

(2) The latitude and longitude of the proposed well location shall be provided on the drawing with a minimum of five (5) decimal places of accuracy and precision using the North American Datum (NAD) of 1983 (e.g. latitude 37.12345 N, longitude 104.45632 W). If GPS technology is utilized to determine the latitude and longitude, all GPS data shall meet the requirements set forth in Rule 215. a. through h.

(3) For directional drilling into an adjacent section, that section shall also be shown on the location plat and dimensions on exterior section lines sufficient to completely describe the quarter section containing the proposed productive interval and bottom hole location shall be indicated. (Additional requirements related to directional drilling are found in Rule 321.)

(4) For irregular, partial or truncated sections, dimensions will be furnished to completely describe the entire section containing the proposed well.

(5) The field-measured distances from the nearer north/south and nearer east/west section lines shall be measured at ninety (90) degrees from said section lines to the well location and referenced on the plat. For unsurveyed land grants and other areas where an official public land survey system does not exist, the well locations shall be spotted as footages on a protracted section plat using Global Positioning System (GPS) technology and reported as latitude and longitude in accordance with Rule 215.

(6) A map legend.

(7) A north arrow.

(8) A scale expressed as an equivalent (e.g. - 1" = 1000').

(9) A bar scale.

(10) The ground elevation.

(11) The basis of the elevation (how it was calculated or its source).

(12) The basis of bearing or interior angles used.

(13) Complete description of monuments and/or collateral evidence found; all aliquot corners used shall be described.

(14) The legal land description by section, township, range, principal meridian, baseline and county.

(15) Operator name.

(16) Well name and well number.

(17) Date of completion of scaled drawing.

(18) All visible improvements within two hundred (200) feet of a wellhead (or, in a high density area within four hundred (400) feet of a wellhead) shall be physically tied in and plotted on the well location plat or on an addendum, with a horizontal distance and approximate bearing from the well location. Visible improvements shall include, but not be limited to, all buildings, publicly maintained roads and trails, major above ground utility lines, railroads, pipelines, mines, oil wells, gas wells, injection wells, water wells, visible plugged wells, sewers with manholes, standing bodies of water, and natural channels including permanent canals and ditches through which water may flow. If there are no visible improvements within two hundred (200) feet of a wellhead (or in a high density area within four hundred (400) feet of a wellhead), it shall be so noted on the Permit-to-Drill, Form 2.

Rule 305.b (1)(B)

i. The notice provisions of this subsection 305.b (1) B do not apply to oil and gas facilities subject to the provisions of 318B.

Rule 904.a(2) to read as follows:

a. **Pit lining requirements.** The following pits shall be lined:

...

(2) Production pits, unless the operator makes a demonstration to the Director that the quality of the produced water is equivalent to or better than that of the underlying aquifer or the operator can clearly demonstrate by substantial evidence, such as appropriate percolation tests, that seepage will not reach the underlying aquifer or waters of the state at contamination levels in excess of applicable standards or in the event the production pit or tank accepts water at an average daily rate equal to or less than five (5) barrels per day and the produced water does not contain any volatile organic compounds (VOC) or BTEX.

1202. IDENTIFICATION OF WILDLIFE SPECIES

b. Wildlife mapping.

(2) Using scientifically acceptable survey techniques coinciding with the season and activity periods for the specific species noted below and based on its review of wildlife occurrence data from the Colorado Division of Wildlife, an operator planning an oil and gas facility shall survey, map, and report the occurrence of all identified wildlife species, including a survey of lands within a ¼ mile radius of a proposed oil and gas facility, on lands legally accessible by the operator **and for which the operator has received written permission from the surface owner**, for the following species:

A. Active black-tailed prairie dog colonies (NE, SE Colorado). Except agricultural areas where the state or local government has determined that black-tailed prairie dogs are a nuisance for agricultural operations.

1208. TIMING LIMITATION AREAS

....

(11) **Prairie dog (~~Black-tailed~~, White-tailed, Gunnison's)**. Development activity shall be restricted in active colonies between March 15 and June 15, except those colonies within 1 mile of urban development areas. In addition, those agricultural areas where the state or local government has designated prairie dogs as a nuisance shall not be subject to the timing limitation requirements.

1209. RESTRICTED SURFACE OCCUPANCY AREAS

a. Restricted Surface Occupancy Areas described below shall be applied to oil and gas operations in Colorado, except in areas subject to the provisions of Rule 318B, using the best available development technology in order to minimize adverse impacts to wildlife resources and to plan and manage oil and gas operations in a manner that balances development with wildlife conservation.

Respectfully Submitted this 6th Day of June, 2008,

Yuma County Commissioners
**THE BOARD OF COUNTY COMMISSIONERS
OF YUMA COUNTY, STATE OF COLORADO**

Dean Wingfield, Chairman

Robin Wiley

Trent Bushner

Berry Petroleum Company

/S/ RICK D. BAILEY

Rick D. Bailey

Holland & Hart LLP

8390 E. Crescent Parkway, Suite 400

Greenwood Village, CO 80111

Tel. (303) 290-1089

Fax (303) 975-5303

COUNSEL FOR BERRY PETROLEUM COMPANY

Rosewood Resources, Inc. and Noble Energy, Inc.

/S/ MICHAEL J. WOZNIAK

Michael J. Wozniak

Beatty & Wozniak, P.C.

216 16th Street, Suite 1100

Denver, Colorado 80202

(303) 407-4499

COUNSEL FOR ROSEWOOD RESOURCES, INC. AND NOBLE ENERGY

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Amended Consensus Alternative for The Yuma County Commissioners**. Was emailed to the state per the order on May 14, 2008 and hard copies delivered on July 30, 2008, per the hearing order as follows:

Original and 15 copies hard copies on July 30, 2008 hand delivered to:

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

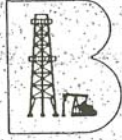
Two hard copies mailed to:

- 2) Kelly Rees, Colorado Department of Law
1525 Sherman Street, 5th Floor,
Denver, Colorado, 80203
- 3) Joshua Epel, Assistant General Counsel
DCP Midstream,
370 17th Street, Suite 2500
Denver, CO 80202.

with an electronic copy sent to:

Commission Marc.fine@state.co.us
Department of Law Kelly.rees@state.co.us

All other parties listed on the "party list"
(http://cogcc.state.co.us/RuleMaking/Party_List.pdf)



Berry Petroleum Company

Wray Field Office
P.O. Box 250
Wray, CO 80758
Ph. (970) 332-3585
Fax: (970) 332-3587
www.bry.com

Linda Briggs
Yuma County Administrator
310 Ash Street, Suite A
Wray, CO 80758

July 25, 2008

Berry Petroleum Company has worked closely with the Yuma County Commissioners and several other groups including Ag leaders, business leaders and community leaders on the drafting and consensus of the alternative proposal for Yuma County.

Berry Petroleum stands in support of the Yuma County Consensus and looks forward to the states approval of the alternative proposal.

Thank you,

Wayne King
DJ-Asset Manager
Wray, CO

MOUNTAIN PETROLEUM CORPORATION

1801 BROADWAY, SUITE 1250
DENVER, COLORADO 80202
(303) 296-1500 FAX< (303) 296-
2029

July 28, 2008

VIA FAX: 970-332-3411

Yuma County
Commissioners 310 Ash
Street, Suite A Wray,
Colorado 80758

Re: Changes to Rules of Colorado Oil & Gas Conservation
Commission
Amended Consensus Alternative For Yuma County

Gentlemen:

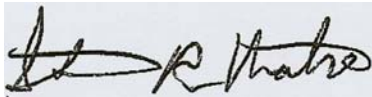
Mountain Petroleum Corporation operates 274 Niobrara gas wells in Yuma County and also has non-operated working interests in a similar number of Niobrara wells in Yuma

County. As such, we support the "Amended Consensus Alternative For Yuma County" being proposed by the Yuma County Coalition as a reasonable alternative to proposed changes to the Colorado Oil and Gas Conservation Commission rules and regulations.

We believe the proposed alternative properly focuses on the unique characteristics of natural gas drilling and operations in Yuma County and provides for reasonable cost effective development of natural gas reserves while adequately protecting public health, wildlife, and private property rights.

Sincerely,

MOUNTAIN PETROLEUM CORPORATION



Steven R. Matre
Vice President

DIAMOND OPERATING, INC.
6680 Gunpark Drive, Suite 100
Boulder, CO 80301

Phone: 303-494-20

Fax: 303-494-3931

July 25, 2008

Mr. David Neslin, Director
Colorado Oil and Gas Conservation Commission
1120 Lincoln Street, Suite 801
Denver, CO 80203

Re: Support of Yuma County Amended Consensus Alternative Proposal

Dear Director Neslin:

Diamond Operating, Inc. owns both operated and non-operated working interests in producing gas wells located in Yuma County, Colorado. As a small operator, Diamond is concerned with the potential negative impacts some of the proposed rules could have on our operations in Yuma County.

The purpose of this letter to voice our support for the referenced Yuma County Proposal. We ask that the COGCC staff and the Commissioners give the proposal their thoughtful consideration.

Thank you.

Sincerely,

DIAMOND OPERATING, INC

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(oid C. Peterson, President

DCP/ls

Petron Development Company
1899 W. Littleton Blvd.
Littleton, Colorado 80120 Telephone
(303) 794..5300

July 30, 2008

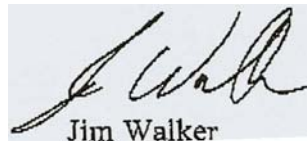
Yuma County Board of
Commissioners 310 Ash Street, Suite
A
Wray, Colorado 80758

RE: Yuma County Consensus

Dear Board of
Commissioners:

By this letter, Petron Development Company joins and ~pproves of the amended Yuma County Consensus document. We feel this accurately reflects the concerns and needs of all stakeholders and citizens of Yuma County, Colorado.

Respectfully,



Jim Walker



*Washington County,
Colorado Office 4 & nq
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July 24, 2008

Board of Yuma County Commissioners:

Thank you so very much for inviting Washington County to participate in your discussion on July 22, 2008 concerning the Draft Rules under consideration by the Colorado Oil and Gas Conservation Commission. Based upon our public testimony earlier before the Commission, we find that the alternative proposal developed among stakeholders in Eastern Colorado as lead by your office complements our stated objectives.

The oil and/or gas formations in Eastern Colorado are not divided by county lines. The protection as afforded by your proposed document to water, soil, and private property rights of landowners are issues that as a board of commissioners we have addressed as principle issues within this possible extensive rule change.

Again thank you for your efforts and note that the Board of Commissioners for Washington County fully supports your document.

Sincerely,

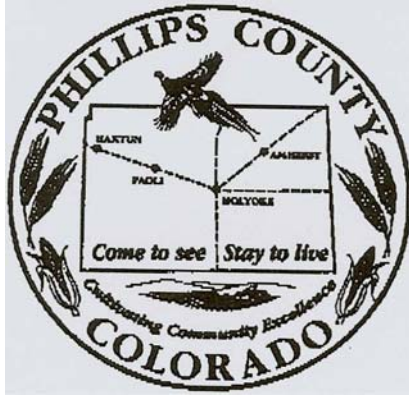
Bruce Johnson, Chairman

David Foy

Dennis Everhart J}~~

PHILLIPS
COUNTY
COMMISSIONERS

221 S. INDEPENDENCE
HOLYOKE, COLORADO 801734



JERRY BEAVERS QUENTIN
"BUD" BIESEMEIER SUSAN E.
ROLL WALTERS
970.814-2434
FAX 970-854-3811

July 28, 2008

Board of Yuma County Commissioners
310 Ash Street, Suite A
Wray, CO 80758

Gentlemen:

The Phillips County Commissioners are vitally concerned about the Oil and Gas Commission's proposed rule changes. We certainly do not believe, in this diverse State of Colorado, that one regulation fits the entire state. The problems expressed on the western slope and in the mountains are not problem areas in eastern Colorado.

We wholeheartedly support the positions expressed by Yuma County. Their proposed revisions and their comments reflect what we feel to be true in Phillips County as well.

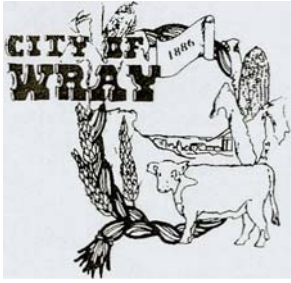
We urge you to hear the facts and act in a way that makes sense for every part of Colorado. Please don't impose unneeded regulations in areas when they are not necessary.

Sincerely, "

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---811san Roll Walters, Chairman
Board of County Commissioners

SRWjdw



CITY HALL

245 West Fourth Street
P. O. Box 35
Wray, Colorado, 80758

Phone 970 332-4431
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STAN HOLMES City
Manager

IDA L. PEERY, CMC
City Clerk

JUL 18 2008



1993

CITY COUNCIL MEMBERS

KIUS JONES, MAYOR
Curt SoEHNER, PRO-TEM
BRET ANDERSON
BOBBY JONES
STEVE McENTIRE
DANNY PRATHER
JOHN ZION

ALVIN R. WALL
CITY ATTORNEY

July 15, 2008

David Neslin, Interim Director
Colorado Oil and Gas Conservation Commission
1120 Lincoln Street, Suite 801
Denver, Colorado 80203

Re: Comments In Regard To Rulemaking Proposal to Implement HB07-1298 and HB071341

Dear Director Neslin and Members of the Commission:

On behalf of the City of Wray, Colorado, I wish to express our concerns with respect to the preliminary draft of rules designed to implement HB07-1298 and HB07-1341. I also wish to express our respect for the responsible development of natural resources in the State of Colorado.

All of the communities in Yuma County have experienced growth in natural gas exploration and development since the Niobrara gas field was found and drilling began earnestly in the early 1980's. Now- due to heavy development the past three to four years- there are well over 2,500 gas wells in the county and many miles of gas pipeline to collect the gas and send it to all parts of the country. Drilling began on 160 acre spacing and has increased to 40 acre spacing; the gas companies and the private land owners have developed relationships through this heavy development.

The development of this natural resource has expanded our county tax base and promoted job growth. It is important for you to know that the City of Wray has not received any complaints about oil and gas companies except for the increased traffic created by the additional employees. This includes any potential complaints in regard to noxious odors, polluted waters, or fragmented wildlife habitat. We can understand how concerns could mount given a different topography, urbanization, or numerous surface water resources. However, many of these factors are generally not present in Northeastern Colorado. Therefore, it is our opinion the current rules are sufficient to protect the well-being of our citizens, and ensure the safety of our environment.

Our City Council strongly urges you to consider the differences between communities in urbanized areas, as well as mountainous terrain, as opposed to the environment of Northeastern Colorado. Rule making which protects the western slope most likely does not apply to our region. Excessive rule-making will only result in unnecessary costs and untimely delays for drilling permit applicants. At some point the costs and entanglements will outweigh the benefits,

and we will watch the continued oil and gas exploration occur east of our State line. We already have been informed of local drilling rigs relocating to Kansas and Nebraska.

Thank you for your attention to this matter. We appreciate your efforts in developing regulations which adequately promote a healthy development of the oil and gas industry in Colorado.

Z~::~~

Kris JOURNAL

City of Wray, Colorado

Cc: Corey Gardner, Colorado State Representative, District 63
Greg Brophy, State Senator, District I
Vnm::: County Commissioners



July 28, 2008

David Neslin, Interim Director
Colorado Oil and Gas Conservation Commission
1120 Lincoln Street, Suite 801
Denver, CO 80203

Dear Members of the Commission:

This letter is written in regard to the implementation of HB07-1298 and HB07-1341. On behalf of the Board of Education for Wray School District RD-2, I wish to express our concern regarding these two house bills.

As I'm sure you are well aware, our School District benefits directly and significantly from the oil and gas production in Yuma County. The production of gas provides fiftyfour percent of the County tax assessment. This has also allowed us to benefit in recently receiving voter approval on a \$7.79 million bond project to renovate our schools. The fifty-four percent assessment is a significant, positive contribution for our district. Any decrease in this assessment or loss of tax base would have a detrimental impact to our school district, the bond repayment schedule and ultimately our students!

Therefore, the Wray School District Board of Education respectfully requests your attention to this important matter. We ask that your efforts be directed at eliminating the proposals to implement HB07-1298 and HB07-1341. Thank you for your attention to this matter.

Sincerely,

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Ron Howard,
Superintendent