

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

**IN THE MATTER OF CHANGES TO THE RULES AND REGULATIONS OF THE
OIL AND GAS CONSERVATION COMMISSION OF THE STATE OF COLORADO**

**CAUSE NO. 1R
DOCKET NO 0803-RM-02**

CITY OF GRAND JUNCTION FINAL PREHEARING STATEMENT

The City of Grand Junction (“Grand Junction” or “City”) a Colorado Municipal Corporation, for its Final Prehearing Statement for the Matter of Changes to the Rules and Regulations of the Oil and Gas Conservation Commission of the State of Colorado (“COGCC”), states as follows.

I. SUMMARY OF STATEMENT

1. The City generally supports the proposed COGCC rule changes to 317B. Grand Junction fully supports changes that provide protective measures for surface water drinking supply areas.

In addition to the proposed changes to Draft Rule 317B:

- a. Grand Junction endorses a requirement that municipal water suppliers should be notified when oil and/or gas operations are proposed for development on lands that serve as sources of drinking water supply. Notification is minimally necessary in order to determine specific local requirements and approval processes, such as those contained in Grand Junction’s Watershed Protection Ordinance and Regulations, including Grand Junction’s Water Supply Permit Application.
- b. The applicability of local source water regulations should not be preempted by COGCC rules. Preemption could impair contracts and other legal and practical relationships. The City has Memoranda of Understanding between it and the United States Bureau of Land Management and the United States Forest Service concerning Grand Junction’s regulations.
- c. Grand Junction supports the use of pitless drilling systems in Colorado Department of Public Health and Environment-designated surface water drinking supply areas. Containment of wastes in pits with impervious liners should be disallowed. These provisions are already part of an industry-adopted watershed plan in Western Colorado (Genesis Plan for Oil and Gas Development in the Palisade and Grand Junction Watershed).
- d. Grand Junction endorses the use of non-toxic fluids for hydraulic fracturing only in surface water drinking supply areas. These provisions are already part of an industry-adopted watershed plan in Western Colorado (Genesis Plan for Oil and Gas Development in the Palisade and Grand Junction Watershed).

- e. Operators should be required to pay for additional State or third-party monitoring to ensure compliance with COGCC and local rules. These provisions are already part of an industry- adopted watershed plan in Western Colorado (Genesis Plan for Oil and Gas Development in the Palisade and Grand Junction Watershed).
 - f. Clear enforcement mechanisms and remediation measures should be required if post-drilling water samples reveal contamination of source waters. These provisions are already part of an industry-adopted watershed plan in Western Colorado (Genesis Plan for Oil and Gas Development in the Palisade and Grand Junction Watershed).
2. Rule 1002 (2): Add requirement to obtain CDPHE Stormwater Permit for sites that disturb soils on >1 acre.
 3. Pollution Prevention Checklist: Add requirement to obtain CDPHE Stormwater Permit for sites that disturb soils on >1 acre.

II. BACKGROUND

Grand Junction’s original 1909 City Charter requires comprehensive control of its drinking water supply system for the citizens of Grand Junction. Over the decades since 1909 Grand Junction has enacted important and necessary controls to ensure the intent of the original City Charter, which is to maintain and protect an adequate source water supply for Grand Junction of the highest quality possible.

Grand Junction’s source water is of exceptional quality, originating as pure snowmelt and precipitation from the Grand Mesa National Forest on the Grand Mesa. The City takes great pride acknowledging it is the ‘first user’ of its source water from the Grand Mesa. There are no industrial or commercial and few agricultural influences on the City’s water supply above the point of its water intake on Kannah Creek.

In 1915 the City signed an Agreement with the United States Forest Service to protect Grand Junction’s water supply and water quality. This agreement ensured the City’s water would remain pure and of high quality and quantity.

To this day, Grand Junction remains ever vigilant of the need to protect its water supply. Extensive historical monitoring has been performed to document baseline water quality. In 2006 the City adopted the Grand Junction Watershed Protection Ordinance and supportive Watershed Regulations in 2007 to further maintain the high quality and quantity of its source waters.

Grand Junction’s 2006 Consumer Confidence Report indicates a conservative calculation of the replacement value of the City’s water supply to be \$183,915,000 (Exhibit A). This value was determined from market rates for acquisition of water rights, reservoirs and canals to bring the water to the City in the event of pollution or harm to its source water and waterworks. The calculation was derived from the value of twenty-eight different water supply control structures which manage seventy-nine separate water decrees.

The amount of \$183,915,000 is but one value associated with Grand Junction’s source water. The ability of the community to maintain its health, sustain economic development, contribute to

quality of life, and protect habitat along Grand Mesa’s creeks and streams are all additional values that deserve protection.

III. FACTUAL AND LEGAL CLAIMS

1. Grand Junction Watershed Protection Ordinance and Regulations

In 2006 Grand Junction adopted a Watershed Protection Ordinance (“Ordinance #3961”, Exhibit B), and 2007 supportive Watershed Regulations (Exhibit C). The ordinance and regulations apply protective pollution prevention measures to the City’s source waters. The Ordinance applies to lands encompassed by the Grand Junction Watershed Boundary (“Map”) (Exhibit D).

The purpose of the Ordinance and Regulations is “to exercise the fullest powers, authorities, privileges and immunities of the City of Grand Junction in maintaining and protecting the City’s water supply and waterworks from injury and water supply from pollution or from activities that may create a hazard to health or water quality or a danger of pollution to the water supply of the City.”

The City’s purpose for the Ordinance is to restrict any activity or require changes in the way the activity or use is performed, within its watershed which creates a substantial risk of pollution or injury to the City’s water supply. No land use activity shall be permitted in the City watershed which creates a substantial risk of pollution or injury to the City’s water supply or waterworks except in compliance with the provisions of its Ordinance.

High risk activities that pose a substantial risk of pollution or injury to the City’s waterworks and/or the quality of the City’s domestic water quality are required to obtain a City Watershed Permit prior to any land use disturbance activities. Any applicant for a land use activity involving oil and gas well drilling, timbering, mining or confined animal feeding operations is required to meet specified standards for issuance of the watershed permit. The standards include water quality monitoring, providing payment for third-party monitoring to ensure compliance with COGCC and local rules and to provide a performance guarantee in the event of forfeiture. Proof of Pollution Liability Insurance is also required.

Grand Junction submits that its Ordinance provides exemplary protection of source water. Grand Junction’s authority to adopt and implement the Ordinance is supported by § 31-15-707 (1)(b) C.R.S.

2. Watershed Plan for the Town of Palisade and the City of Grand Junction, Colorado (“Genesis Gas and Oil LLC Plan” or “Genesis Plan”) (Exhibit E)

In February 2006 Genesis Gas & Oil LLC (“Genesis”) acquired oil and gas leases from the Bureau of Land Management (“BLM”). The City of Grand Junction and the Town of Palisade protested the proposed leases that were within their watersheds. Genesis voluntarily accepted “no-surface occupancy stipulation” on 960 acres surrounding 24 sensitive areas within the Palisade Watershed. In August 2006 the BLM issued the leases with the additional no-surface occupancy stipulation and issued a one-year suspension on the leases within the watersheds. The purpose of the suspension was to create a voluntary, non-binding and collaborative watershed

plan between Genesis, Grand Junction, Palisade and the BLM. If Genesis sells or transfers its leases to another company the BLM will expect the new lessee(s) to use the Genesis Plan as a template for operations and coordination.

Major components of the Genesis Plan are:

- communication and coordination with local communities;
- risk analysis addressing possible surface water and groundwater contamination;
- third-party water studies and monitoring during well development;
- voluntary no-surface occupancy commitments;
- prescribed best management practices for risk mitigation to protect watersheds clustered development well pad spacing:
 - collaborative stormwater management plan;
 - subcontractor education;
 - emergency response plan;;
 - air quality controls;
 - closed loop drilling systems;
 - defined cementing and casing programs;
 - use of non-toxic green hydraulic fracturing fluids;
 - utilization of tracers during exploration phase to ensure fracing fluids are contained to hydrocarbon zones, defined produced water disposal methods);
 - on-going inspections to determine compliance with local, state and federal regulations and stipulations

Both the BLM and industry have supported and sanctioned the use of the Genesis Plan. Catherine Robertson, BLM Field Manager, has reiterated “that the BLM is looking at the plan to be used for any future commercial or industrial development in the watershed or any BLM administered lands in the future, such as timber sales. The Community Development Plan will apply to (future) operators such as Aspen Drilling.” (minutes, Watershed Working Group meeting, November 8, 2006). As such the Genesis Plan may be deemed to be operative and binding on operators. That result should not be disturbed.

3. Western Water and Land, Inc. Field Inspection Report, May 12, 2008: Whitewater Field – Wells Mansur 33-1, Mansur 33-4, Federal 12-1, Federal 12-2, Federal 13-11, Sink Creek Compressor Station April 24-25, 2008 (Exhibit F)

Western Water & Land, Inc. (“WWL”) on behalf of the City conducted field inspections of six oil and gas facilities operated by Aspen Operating, LLC (“Aspen”), located in the Whitewater Field on the Grand Mesa. Aspen is the only active operator in the Whitewater Field, having purchased leases from previous operators.

The inspection was preformed on wells located in City watershed lands as well as wells located close to the City watershed. The inspections were performed to audit construction and operational compliance with existing state regulations and federal lease stipulations as pertaining to surface conditions. The results of the audit are important because Aspen Operating is proposing to drill as many as 175 new wells in the Whitewater Field area.

In general the WWL report indicated numerous violations of CDPHE stormwater regulations including lack of a CDPHE stormwater permit, lack of adequate documentation including inspection reports, lack of Stormwater Management Plan (SWMP) map with designated facilities

and related stormwater BMPs and lack of improper maintenance of BMPs on roadways and stream crossings.

COGCC rule deficiencies were also found, including lack of proper signage and labeling on sites, wells and tanks, no marking of flow lines, no support or guards present at stream or drainage crossings, bradenhead leak, production pit filled close to freeboard, inadequate spacing requirements between separator and tank and tank to well, lack of proper fencing around well heads, inadequate bird guards in place, and an open frac tank one-third full of oil with no observed containment in place.

The results of the WWL report confirm that existing rules and inspection procedures need to be reviewed. In addition the City asserts that additional inspection staff is necessary and/or operators should be required to pay for additional State or third-party monitoring to ensure compliance with COGCC and local rules.

IV. ISSUES

1. For Draft Rule 317B the City endorses a requirement that municipal water suppliers should be notified when oil and/or gas operations are proposed for development on lands that serve as sources of drinking water supply. Notification is minimally necessary in order to determine specific local requirements and approval processes, such as those contained in Grand Junction's Watershed Protection Ordinance and Regulations.

Grand Junction also proposes that the notification requirement apply to midstream pipeline (gas gathering lines and gas gathering systems) and related facilities as well as oil and gas well development and operations.

Draft Rule 317B should also specify and describe a process for the COGCC map of surface water drinking supply areas creation, regular review and amendment.

2. The applicability of local source water regulations should not be preempted by the COGCC rules. Preemption could impair contracts and other legal and practical relationships. The City has Memorandum of Understanding and Agreements between it and the United States Bureau of Land Management and the United States Forest Service concerning Grand Junction's regulations. These agreements were reached because the parties understand and agree that it is mutually beneficial to cooperate in land-use planning, development approval(s), policy development and implementation and decision-making.

The purpose of the 2005 Memorandum of Understanding between Grand Junction and the BLM is "to formalize a partnership between the City and BLM to ensure protection of the quality and quantity of the City's municipal water supply; to develop and implement a system for communication and consultation between the City and the BLM in the processes and practices of developing and implementing local, state and federal land use actions; and to ensure active involvement by each party in new and existing project planning and development within the Grand Junction Watershed Area. Both parties will cooperate in permitting and land-use decision making especially when the decision has or may have a direct impact on water quality and/or water quantity."

The 1915 Agreement between Grand Junction and the United States Forest Service states in part: “The use of said (the City watershed lands which flow into Kannah Creek and are located on Forest Service boundary) lands will not be permitted without the approval of the proper city authorities except for the following purposes (emphasis added), to wit: Measures necessary for the proper protection and care of the forest...” and “All possible efforts shall be made to prevent the contamination of the water and should the water become contaminated and impure, all efforts will be made that are possible under the laws tending to purify such contaminated water, and to prevent the water so contaminated and impure from flowing into Kannah Creek, from which creek the City derives its water supply.”

Draft Rule 317B should clearly articulate, consultation with, and, pursuant to C.R.S. 30-28-123, deference to local government requirements to avoid, minimize, rectify and compensate impacts.

In addition, Draft Rule 317B(d) also provides a variance process for which there is no notice to the public or the owner of the source of public drinking water, and no opportunity for a prevariance consultation or hearing. It is important that the owner of the source of the public drinking water, and the public that relies on the safety and integrity of that source; be provided notice and an opportunity to be heard before a variance is granted.

3. Grand Junction supports the use of pitless drilling systems in Colorado Department of Public Health and Environment-designated surface water drinking supply areas. Containment of wastes in pits with impervious liners should be disallowed. These provisions are already part of an industry-adopted watershed plan in Western Colorado (Genesis Plan for Oil and Gas Development in the Palisade and Grand Junction Watershed).
4. Grand Junction endorses the use of non-toxic fluids for hydraulic fracturing only in surface water drinking supply areas. These provisions are already part of an industry-adopted watershed plan in Western Colorado (Genesis Plan for Oil and Gas Development in the Palisade and Grand Junction Watershed).
5. Operators should be required to pay for additional State or third-party monitoring to ensure compliance with COGCC and local rules. These provisions are already part of an industry- adopted watershed plan in Western Colorado (Genesis Plan for Oil and Gas Development in the Palisade and Grand Junction Watershed).
6. Clear enforcement mechanisms and remediation measures should be required if post-drilling water samples reveal contamination of source waters. These provisions are already part of an industry-adopted watershed plan in Western Colorado (Genesis Plan for Oil and Gas Development in the Palisade and Grand Junction Watershed).
7. Rule 1002 (2): Add requirement to obtain CDPHE Stormwater Permit for sites that disturb soils on >1 acre.
8. Pollution Prevention Checklist: Add requirement to obtain CDPHE Stormwater Permit for sites that disturb soils on >1 acre.

V. WITNESSES

1. City of Grand Junction staff will testify regarding the Grand Junction Watershed Protection Ordinance and Regulation:
 - John Shaver, City of Grand Junction Attorney or staff designee
 - Greg Trainor, Director of Utility and Street Systems
 - Eileen List, Environmental Services Manager
2. Bruce Smith, Principal Western Water and Land Inc. will testify regarding Western Water and Land Inc Report “Whitewater Field – Wells Mansur 33-1, Mansur 33-4, Federal 12-1, Federal 12-2, Federal 13-11, Sink Creek Compressor Station, April 24-25, 2008”

VII. EXHIBITS

- A. City of Grand Junction Report and spreadsheet: Value of the City’s Water Supply
- B. City of Grand Junction Watershed Protection Ordinance # 3961
- C. City of Grand Junction Watershed Protection Regulations
- D. Grand Junction Watershed Boundary Map
- E. Watershed Plan for the Town of Palisade and the City of Grand Junction, Colorado (“Genesis Gas and Oil LLC Plan”)
- F. Western Water and Land, Inc. Field Inspection Report, May 12, 2008: Whitewater Field – Wells Mansur 33-1, Mansur 33-4, Federal 12-1, Federal 12-2, Federal 13-11, Sink Creek Compressor Station April 24-25, 2008

Respectfully submitted this 13th day of May 2008.

OFFICE OF THE CITY ATTORNEY

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CERTIFICATE OF SERVICE

I hereby certify that an original and fifteen (15) true and correct copies of the attached City of Grand Junction Preliminary Prehearing Statement were served overnight delivery on the 13th day of May and filed with the Colorado Oil and Gas Conservation Commission as follows:

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

and further certify that two (2) true and correct copies of said statement were also served by overnight delivery on the 13th day of May, 2008 to the Department of Law, as follows:

Kelly Rees
Colorado Department of Law
1525 Sherman Street, 7th Floor
Denver, Colorado 80203

and also certify that an electronic copy of said statement was delivered to:
marc.fine@state.co.us and to all parties of record

Darlene Wilkinson
Senior Administrative Assistant
City of Grand Junction