

**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
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ENERGEN RESOURCES CORPORATION'S

REBUTTAL STATEMENT

COMES NOW Energen Resources Corporation (hereinafter "Energen"), by and through its counsel, Beatty and Wozniak, P.C. and submits this REBUTTAL STATEMENT and as grounds therefore states as follows:

Introduction

The Commission, in a rule-making proceeding, is constrained by the statutory requirements when promulgating rules. Among the statutory elements to be considered is the requirement that the record demonstrate a need for promulgating the rule. Energen submits that the record before this Commission does not support the statewide application of the Draft Rules. In fact, other than conclusory allegations that these rules should apply statewide on precautionary justifications, little specific information is presented in the prehearing statements regarding statewide problems in Colorado. However, ample evidence is before the Commission that the application of these rules will harm the economic interests of the oil and gas industry and the small businesses that rely on this industry. As a result, these rules, if promulgated, should focus on those areas of Colorado where the record demonstrates a need.

Restatement of Arguments in Prehearing Statement

Energen restates by reference the arguments contained in its Prehearing Statement that the existing rules adequately protect resources in the San Juan Basin and Archuleta County in particular. After reviewing all of the prehearing statements filed by the parties to this matter including the Staff of the Oil and Gas Commission, the Department of Public Health and Environment and the Division of Wildlife, Energen submits that the record before the Commission in this proceeding does not demonstrate a need for these rules in the San Juan Basin, especially within the interior boundaries of the Southern Ute Indian Tribe which is a sovereign nation. Energen is subject not only to Tribal jurisdiction and its rules and regulations when operating upon lands within the exterior boundary but also to overarching rules and regulations of the Bureau of Land Management ("BLM") and the Bureau of Indian Affairs ("BIA"). This Commission governs whatever "jurisdiction" it claims only through contractual agreement with the Tribe, in the 1991 Memorandum of Understanding by and between the Commission, the Tribe and the BLM on the one hand, and between the Tribe, the BLM and BIA on the other. Notwithstanding these consensual agreements, this Commission attempts to usurp

Tribal authority over its minerals and apply its proposed rules to all operations on the Reservation except possibly where the Tribe owns the surface. Energen maintains that this Commission must exclude the Tribe and Tribal lands from the operation of its draft rules and such exclusion should apply to those situations where Tribal lands are pooled or communitized with other lands within the exterior boundaries of the Reservation.

The record is devoid of any information that the Tribe has failed to protect public health, safety and welfare or the environment. In fact, many Tribal programs have additional and more stringent requirements which conflict and duplicate the Commission's draft rules. The staff has failed to demonstrate that the Tribe has failed in its steward capacity or that there is any need to "protect" the Tribe, its members or its lands.

Commission to Weigh Record Before Promulgating Rules

Pursuant to C.R.S. § 24-4-103 (b) (I)-(V), the Commission must decide whether to promulgate these rules based upon 5 factors. First, the "record of the rule-making proceeding [must] demonstrate[] the need for the regulation." C.R.S. § 24-4-103 (b) (I). Therefore the Commission is constrained to consider only those matters before you in the written record and through testimony. The record does not contain any information that the current rules need changing statewide. In fact, there is a little evidence in the record about problems with oil and natural gas development in the San Juan Basin. Further, there are special rules put in place by this Commission that address problems that have arisen in the San Juan Basin. The existing rules have adequately addressed any problems that have arising in that area. The existence of special rules for the San Juan Basin outweighs the need to apply the Draft Rules in this part of the state. By allowing continued operation under these rules, the Commission can focus upon the areas where the issues have been identified – mainly the Piceance Basin.

Another factor that is important for the Commission to consider is whether "the regulation is clear and simply stated so that its meaning will be understood by any party required to comply with the regulation." C.R.S. § 24-4-103 (b) (III). The record amply demonstrates that many parties have different interpretations of how these rules will function. *See* Prehearing Statements of Club 20; American Royalty Council; National Association of Royalty Owners, Rocky Mountain Chapter; Wells Ranch LLP; Colorado Cattlemen's Association, et al.

Additionally, the Commission needs to consider whether the "regulation does not conflict with other provisions of the law." C.R.S. § 24-4-103 (b) (IV). Once Again, there is little evidence that clearly reconciles – let alone recognizes - the conflicts the Draft Rules create with other provisions of law. However, there is ample evidence before the Commission that these rules create conflicts with private property rights which are given extensive protections under the United States and Colorado Constitutions. U.S. Const. Amend. V and XIV; C.R.S.A. Const. Art 2, § 15; *See also* Prehearing Statements of Club 20; American Royalty Council; National Association of Royalty Owners, Rocky Mountain Chapter; Wells Ranch LLP; Colorado Cattlemen's Association, et al. Indeed, one of the most troubling aspects of the confusion and conflicts created by these Draft Rules is that it will require a case by case application of these rules and their interaction with private mineral interests and other landowners. From a policy standpoint, this confusion and the application of these Rules will likely result in increased

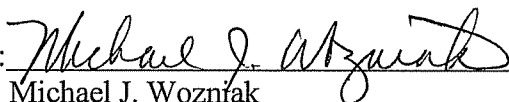
application to the court system by private landowners, mineral interests owners and lessees, to reconcile what should have been reconciled by the Commission.

Draft Rule 317B and 1209.b (16)

In particular, Draft Rules 317B and 1209.b(16) may cause significant economic damage to Energen's investment-backed expectation to economically develop its mineral interests in Colorado. Energen has significant leasehold interests located within the exterior boundaries of the Southern Ute Indian Reservation. The blanket application of Rule 317B and 1209.b(16) may significantly impair, if not outright prohibit, Energen's ability to develop its leases and correspondingly, minerals owned by the Southern Ute Indian Tribe which are within the same drilling and spacing units. Rule 317B and 1209.b(16) may eliminate any drilling area from Energen's leasehold because the other areas have NSO stipulations leaving the only remaining drilling areas within 317B and 1209.b(16) coverage. The Tribal lands within Energen's spacing units may only be accessed by directional drilling from adjacent fee lands which are leased to Energen but which could be prevented access due to Rule 317B and Rule 1209b(16). The Tribe and Energen recently obtained Order No. 112-210 from this Commission on May 8, 2008 which authorizes access to Tribal minerals from adjacent fee lands, use of common pads and contains many other environmental stipulations (see copy attached). To overrule Energen's ability to exploit the Fruitland reserves violates the "prevention of waste" requirements in the Oil and Gas Conservation Act and may amount to a "taking" of Energen's property with no justification. This may result in a significant reduced in capital investment in the State of Colorado. The net result will not be limited to the price tag of Energen's investments because the Tribe, private mineral interest owners will both lose revenue and taxes and other ancillary benefits of development will be denied.

In addition, it is difficult to tell how the areas covered by Draft Rule 317B would be expanded or contracted depending on the circumstances. As it stands today, this Rule could be changed at the behest of the Department of Public Health and Environment or the Colorado Division of Wildlife without notice or opportunity to be heard. At a minimum, these rules need to state that no expansion of these areas shall occur without having a hearing before the Commission.

Respectfully submitted this 6th day of June, 2008,

By: 
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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of June, 2008, copies of the foregoing document entitled **ENERGEN RESOURCES CORPORATION'S REBUTTAL STATEMENT** were served as follows:

Original and 15 copies delivered to:
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Docket No. 0803-RM-02
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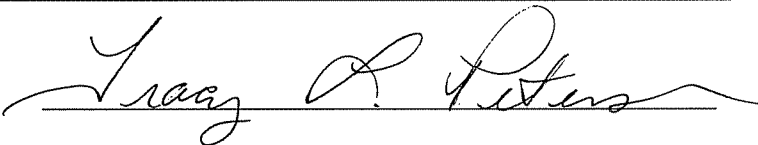
Electronic copies to the following parties:

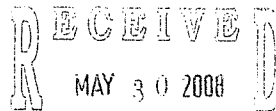
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BEFORE THE OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO

Beatty & Wozniak, P.C.

IN THE MATTER OF THE PROMULGATION AND) CAUSE NO. 112
ESTABLISHMENT OF FIELD RULES TO GOVERN)
OPERATIONS IN THE IGNACIO-BLANCO FIELD,) ORDER NO. 112-210
ARCHULETA COUNTY, COLORADO)

REPORT OF THE COMMISSION

This cause came on for hearing before the Commission at 9:00 a.m. on May 8, 2008, in Suite 801, The Chancery Building, 1120 Lincoln Street, Denver, Colorado, for an order to vacate 320-acre drilling and spacing units and establish various drilling and spacing units and to allow a horizontal well and various optional additional wells, with a bottomhole location no closer than 660 feet to any outer boundary for certain lands in Township 32 North, Ranges 3 through 5 West, N.M.P.M. (except for those specific units identified below in which the setback to the outer unit boundary is to remain at 990 feet).

FINDINGS

The Commission finds as follows:

1. Red Willow Production Company and Energen Resources Corporation ("Red Willow and Energen"), as Applicants herein, are interested parties in the subject matter of the above-referenced hearing.
2. Due notice of the time, place and purpose of the hearing has been given in all respects as required by law.
3. The Commission has jurisdiction over the subject matter embraced in said Notice, and of the parties interested therein, and jurisdiction to promulgate the hereinafter prescribed order pursuant to the Oil and Gas Conservation Act and the terms of the Memorandum of Understanding ("MOU") between the Commission and the Bureau of Land Management ("BLM").
4. On June 17, 1988, the Commission issued Order No. 112-60, which among other things, established 320-acre drilling and spacing units for certain lands including certain lands in Township 32 North, Ranges 3 through 5 West, N.M.P.M., for production of gas from the Fruitland coal seams, with the permitted well to be located no closer than 990 feet to any outer boundary of the unit, nor closer than 130 feet to any interior quarter section line.
5. On December 17, 1990, the Commission issued Order No. 112-85, which among other things, established 320-acre drilling and spacing units for certain lands in Township 32 North, Ranges 3 through 5 West, N.M.P.M., for production from the Fruitland coal seams.
6. On March 19, 2008, Red Willow and Energen, by their attorneys, filed with the Commission a verified application to vacate Order No. 112-85, which established 320-acre drilling and spacing units and established various drilling and spacing units and setbacks from outer unit boundaries as described below, and to allow a horizontal well and various optional additional wells, for production from the Fruitland coal seams.
7. On April 23, 2008, Red Willow and Energen, by their attorneys, filed with the Commission an amendment to their application, which deleted a previously requested optional well in the irregular sections along the state line:

Designated Drilling and Spacing Unit	Number of Acres in Unit	Optional Additional Number of Wells in Unit	Setback from Outer Unit Boundary
<u>Township 32 North, Range 3 West, N.M.P.M.</u>			
Section 17: All	1280.70	3	660'
Section 18: All			
Section 19: E½	352.62	0	660'
Section 20: W½ W½			
Section 20: E½ and E½ W½	356.65	0	660'
<u>Township 32 North, Range 3 West, N.M.P.M.</u>			
Section 19: W½	352.73	0	660'
<u>Township 32 North, Range 4 West, N.M.P.M.</u>			

Section 24: E½ E½

Township 32 North, Range 4 West, N.M.P.M.

Section 7: All	641.30	1	660'
Section 8: S½ Section 17: All	960.00	3	660'
Sections 10 through 16: All	640.00	1	660'
Section 18: All	641.04	1	660'
Section 19: E½ Section 20: W½ W½	358.78	0	660'
Section 20: E½ and E½ W½	356.58	0	660'
Section 21: W½ E½ and W½	356.62	0	660'
Section 21: E½ E½ Section 22: W½	359.02	0	660'
Section 22: E½ Section 23: W½ W½	360.00	0	660'
Section 23: E½ and E½ W½	360.00	0	660'
Section 24: W½ and W½ E½	360.00	0	660'

Township 32 North, Range 5 West, N.M.P.M.

Section 3: W½	320.00	0	660'
Section 4: All	640.00	1	990'
Section 9: All	640.00	1	990'
Sections 10 through 15: All	640.00	1	660'
Section 23: E½ and E½ W½	371.76	0	660'
Section 24: W½ E½ and W½	370.02	0	660'

Township 32 North, Range 4 West, N.M.P.M.

Section 19: W½	365.45	0	660'
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Township 32 North, Range 5 West, N.M.P.M.

Section 24: E½ E½

8. The surface and mineral interests under a majority of the Subject Lands are owned in trust by the United States of America for the benefit of the Southern Ute Indian Tribe ("Trust Lands"). The minerals under those Trust Lands have been leased by the Southern Ute Indian Tribe to Red Willow Production Company (a tribally owned enterprise of the Southern Ute Indian Tribe) under a mineral development agreement approved by the United States Department of the Interior, Bureau of Indian Affairs. The mineral development agreement held by Red Willow Production Company prohibits the surface location of wells on such Trust Lands.

9. On April 25, 2008, Red Willow and Energen, by their attorney, filed with the Commission a written request to approve the application based on the merits of the verified application and the supporting exhibits. Sworn written testimony and exhibits were submitted in support of the application.

10. Testimony and exhibits submitted in support of the application showed that there are no producing Fruitland coal seam wells on the subject lands. Additional testimony indicated that no proceeds of production have been distributed to any working interest or mineral interest owner in the Fruitland coal seams, based upon any previously authorized spacing unit which is to be vacated.

11. Testimony and exhibits submitted in support of the application showed that the applicants are the majority leasehold owner in the application lands.

12. Testimony and exhibits submitted in support of the application showed that vertical wells as proposed to be located in previously authorized units will not efficiently and economically drain each of the 320-acre drilling and spacing units. Additional testimony indicated that the proposed horizontal wells are

necessary to reduce surface impacts, to prevent waste, protect correlative rights and to efficiently recover gas and associated hydrocarbons from the Fruitland coal seams all in accordance with the Colorado statutes, the rules and regulations of this Commission and, with respect to Tribal lands, applicable rules and regulations of the BLM. Further testimony indicated that substituting a limited number of horizontal wells on centralized well pads for one or two vertical wells in each 320-acre unit will significantly reduce surface impacts.

13. Testimony and exhibits submitted in support of the application showed that one (1) horizontal well should be authorized in each proposed drilling and spacing unit as specifically delineated and identified in Finding No. 7 above. In addition, for 640-acre drilling and spacing units, Applicants are requesting that they be authorized to drill one optional additional infill well at the operator's discretion in such drilling and spacing unit. With respect to the 960 acre and 1,280 acre proposed drilling and spacing units described in Finding No. 7 above, Applicants request the right to drill up three (3) additional optional wells, all of which are likely to be horizontal wells. The number of optional infill wells (in addition to one parent well for each drilling and spacing unit) is listed in Finding No. 7 above for each proposed drilling and spacing unit.

14. Testimony and exhibits submitted in support of the application showed that all producing legs of any horizontal wells proposed hereunder shall be no closer than 660 feet to any outer boundary of the drilling and spacing unit (except for those specific units identified above in which the setback to the outer unit boundary is to remain at 990 feet) with no setback to any interior quarter section lines.

15. Testimony and exhibits submitted in support of the application showed that the surface location of any optional infill well shall be located on a common or expanded well pad with the first well for such drilling and spacing unit such that only one (1) surface pad shall exist for each drilling and spacing unit. Applicants also request the right in some cases, to locate the surface pads and wellhead facilities outside of the boundaries of the producing drilling and spacing unit so that no surface well pad will be located on the surface of Trust Lands.

16. Testimony and exhibits submitted in support of the application showed that the requested horizontal wells from centralized well pads can be developed in a manner consistent with protection of public health, safety and welfare and in a manner consistent with protection of the environment. Additional testimony indicated that absent creation of the proposed units and the authorization of horizontal drilling as set forth herein, due to current lease terms, it is likely that previously authorized vertical wells will not be drilled and waste will occur.

17. Testimony and exhibits submitted in support of the application showed that the Fruitland coal seams underlie the entire application lands and is a common source of supply.

18. Testimony and exhibits submitted in support of the application showed that Original Gas in Place ("OGIP") estimates vary throughout the application lands depending upon coal thickness, moisture, ash content and area included in each drilling and spacing unit. Additional testimony indicated that OGIP is reflected on average between 5.9 to 11.1 BCFG in some of the smaller 360-acre proposed drilling and spacing units to averaging between 16.2 to 21.6 BCFG for the proposed 640-acre drilling and spacing units, and greater for the larger drilling and spacing units. Further testimony indicated that the range of expected recoveries, assuming the optional wells are drilled, is between 40% and 60% of OGIP.

19. Testimony and exhibits submitted in support of the application showed that the establishment of the proposed drilling and spacing units promote an efficient drainage of the reserves and is an economic venture with payout, based upon reasonable cost and recovery factor assumptions, achieved in approximately 3.5 years.

20. The above-referenced testimony and exhibits show that the proposed spacing and density will allow more efficient reservoir drainage, will prevent waste, will assure a greater ultimate recovery of gas, and will not violate correlative rights.

21. Red Willow Production Company and Energen Resources Corporation agreed to be bound by oral order of the Commission.

22. Based on the facts stated in the verified application, having received no protests, and based on the Hearings Officer review of the application under Rule 511.b., the Commission should enter an order to vacate 320-acre drilling and spacing units and establish various drilling and spacing units as described in Finding No. 7 above, and to allow a horizontal well and various optional additional wells, with a bottomhole location no closer than 660 feet to any outer boundary for certain lands in Township 32 North, Ranges 3 through 5 West, N.M.P.M. (except for those specific units identified above in which the setback to the outer unit boundary is to remain at 990 feet).

ORDER

NOW, THEREFORE IT IS ORDERED, that the 320-acre drilling and spacing units previously established are hereby vacated, and the following drilling and spacing units, number of wells and setbacks are hereby established for production from the Fruitland coal seams from horizontal wells:

Designated Drilling and Spacing Unit	Number of Acres in Unit	Optional Additional Number of Wells in Unit	Setback from Outer Unit Boundary
<u>Township 32 North, Range 3 West, N.M.P.M.</u> Section 17: All Section 18: All	1280.70	3	660'
Section 19: E½ Section 20: W½ W½	352.62	1	660'
Section 20: E½ and E½ W½	356.65	1	660'
<u>Township 32 North, Range 3 West, N.M.P.M.</u> Section 19: W½	352.73	1	660'
<u>Township 32 North, Range 4 West, N.M.P.M.</u> Section 24: E½ E½			
<u>Township 32 North, Range 4 West, N.M.P.M.</u> Section 7: All	641.30	1	660'
Section 8: S½ Section 17: All	960.00	3	660'
Sections 10 through 16: All	640.00	1	660'
Section 18: All	641.04	1	660'
Section 19: E½ Section 20: W½ W½	358.78	1	660'
Section 20: E½ and E½ W½	356.58	1	660'
Section 21: W½ E½ and W½	356.62	1	660'
Section 21: E½ E½ Section 22: W½	359.02	1	660'
Section 22: E½ Section 23: W½ W½	360.00	1	660'
Section 23: E½ and E½ W½	360.00	1	660'
Section 24: W½ and W½ E½	360.00	1	660'
<u>Township 32 North, Range 5 West, N.M.P.M.</u> Section 3: W½	320.00	1	660'
Section 4: All	640.00	1	990'
Section 9: All	640.00	1	990'
Sections 10 through 15: All	640.00	1	660'
Section 23: E½ and E½ W½	371.76	1	660'
Section 24: W½ E½ and W½	370.02	1	660'
<u>Township 32 North, Range 4 West, N.M.P.M.</u> Section 19: W½	365.45	1	660'
<u>Township 32 North, Range 5 West, N.M.P.M.</u> Section 24: E½ E½			

IT IS FURTHER ORDERED, that wells drilled in the above-described lands shall comply with certain provisions of the MOU between Red Willow and Energen and La Plata County, and shall comply with all terms, conditions and provisions of prior Commission Orders in Cause No. 112, including without limitation, the specific provisions of Order No. 112-157 including the Rule 508.j.(3)B. conditions attached

thereto, to the extent they do not duplicate the provisions of the MOU. For convenience and ease of reference, the relevant conditions of the MOU and Order No. 112-157, including Rule 508.j.(3)B. conditions, are set forth below. Conflicts between the conditions of the MOU set forth herein and the terms, conditions and provisions of Order No. 112-157 shall be resolved in favor of the MOU.

IT IS FURTHER ORDERED, that the following provisions of the proposed MOU between Red Willow and Energen and La Plata County shall be applied to additional wells where the surface location is proposed to be sited on lands subject to Commission jurisdiction, in addition to any requirements of applicable existing Commission Rules and Regulations or orders:

Surface Density The density of Fruitland Coal Well Pads within the Infill Application Area shall not exceed four (4) within any single 320-acres for the Fruitland Coal Seam Formation. Notwithstanding the foregoing, nothing contained in this provision shall be construed so as to require the closure or abandonment of any existing gas well.

Storm Water Management and Spill Prevention Containment and Control Even if not required to do so by any applicable regulation or law, Red Willow and Energen agree to utilize best management practices for all pad expansions and new pads and for road and pipeline development or improvements.

Water Well Monitoring If a conventional gas well exists within one quarter ($\frac{1}{4}$) mile of the bottom hole location of a proposed Infill Well, then the two (2) closest water wells within a one-half ($\frac{1}{2}$) mile radius of a conventional gas well shall be sampled by Red Willow and Energen as water quality testing wells. If possible, the water wells selected shall be on opposite sides of the existing conventional gas well not exceeding one-half ($\frac{1}{2}$) mile radius. "Infill Well" means wells drilled pursuant to this Order No. 112-210. "Conventional gas well" means a well producing from a non-coalbed methane formation found in the San Juan Basin, such as the Mesaverde or Dakota Sandstone Formation.

If water wells on opposite sides of the conventional gas well cannot be identified, then the two (2) closest wells within one-half ($\frac{1}{2}$) mile radius shall be sampled. If two (2) or more conventional gas wells are located within one quarter ($\frac{1}{4}$) mile of the bottom hole location of the proposed Infill Well, then the conventional gas well closest to a proposed Infill Well shall be used for selecting water wells for sampling.

If no conventional gas wells are located within one quarter ($\frac{1}{4}$) mile radius of the bottom hole location of the proposed Infill Well, then the selected water wells shall be within one quarter ($\frac{1}{4}$) mile of the bottom hole location of the proposed Infill Well. In areas where two (2) or more water wells exist within one quarter ($\frac{1}{4}$) mile of the bottom hole location of the proposed Infill Well, then the two (2) closest water wells shall be sampled by Red Willow and Energen. Ideally, if possible, the water wells selected shall be on opposite sides of the bottom hole location of the proposed Infill Well. If water wells on opposite sides of the bottom hole location of the proposed Infill Well cannot be identified, then Red Willow and Energen shall sample the two (2) closest wells within one-quarter ($\frac{1}{4}$) mile radius. If two (2) water wells do not exist within one-quarter ($\frac{1}{4}$) mile radius, then the two closest water wells within a one-half ($\frac{1}{2}$) mile radius shall be selected.

If no water well is located within a one-quarter ($\frac{1}{4}$) mile radius area or if access is denied, two water wells within one-half ($\frac{1}{2}$) mile of the bottom hole location of the Infill Well shall be selected. If there are no water quality testing wells meeting the foregoing criteria, then sampling shall not be required. If the BLM or the Commission have already acquired data on a water well within one quarter ($\frac{1}{4}$) mile of the conventional gas well, but it is not the closest water well, it shall be given preference in selecting a water quality testing well. The "initial baseline testing" described in this paragraph shall include all major cations and anions, total dissolved solids ("TDS"), iron and manganese, nutrients (nitrates and nitrites), selenium, dissolved methane, pH, presence of bacteria and specific conductance and field hydrogen sulfide.

If free gas or a methane concentration level greater than 2 milligrams/liter ("mg/L") is detected in a water quality testing well, compositional analysis and isotopic analyses of the carbon and hydrogen of the methane shall be performed to determine gas type (thermogenic, biogenic or an intermediate mix of both). If the testing results reveal biogenic gas, no further isotopic testing shall be done. If the carbon isotope test results in a thermogenic or intermediate mix signature, annual testing shall be performed thereafter and an action plan shall be drafted by Red Willow and Energen to determine the source of the gas. If the methane concentration level increases by more than 5 mg/L between sampling periods, or increases to more than 10 mg/L, an action plan shall be drafted to determine the source of the gas.

The initial baseline testing shall occur prior to the drilling of the proposed Infill Well. Within one (1) year after completion of the proposed Infill Well, a "post completion" test shall be performed for the same parameters above and repeated three (3) and six (6) years thereafter. If no significant changes from the baseline have been identified after the third test (the six year test), no further testing shall be required. The testing schedule shall restart after the drilling of a new Infill Well on an existing Well Pad if the wells to be tested include those tested for the 160-acre infill program. Additional "post completion" test(s) may be required if changes in water quality are identified during follow-up testing. The Director of the Commission may require further water well sampling, which may include water quantity monitoring, at any time in response to complaints from water well owners.

Within three (3) months of collecting the samples used for the test, copies of all test results described above shall be provided to the Commission and the County and the landowner where the water quality testing well is located.

Plugged and Abandoned Wells/Soil Gas Vapor Survey A soil gas vapor-monitoring program shall be designed to determine a possible lack of zonal isolation along wellbores of plugged and abandoned wells. Red Willow and Energen shall attempt to identify any plugged and abandoned wells located within one-quarter (¼) mile of the bottom hole location of any Infill Well. Any plugged and abandoned well within one-quarter (¼) mile of the bottom hole of an Infill Well shall be assessed for risk, taking into account cementing practices reported in the plugged and abandoned reports. Red Willow and Energen shall notify the Commission of all results of all risk assessments of plugging procedures. The Commission may appropriate funds under Rule 701 (the Environmental Response Fund) to conduct soil gas monitoring tests to further define the risks. If the monitoring reveals a possible lack of zonal isolation, the Commission may then conduct or order any necessary remediation or other authorized activities.

IT IS FURTHER ORDERED, that the following terms, conditions and provisions of Order No. 112-210 shall be applied to additional wells where the surface location is proposed to be sited on lands subject to Commission jurisdiction, in addition to any requirements of applicable existing Commission Rules and Regulations:

Well Permit Limitations A Commission hearing shall be required before a drilling permit may be issued for a well site located within one and one-half (1½) miles of the outcrop contact between the Fruitland and Pictured Cliffs Formations. The purpose of the hearing shall be to address potential adverse impacts to the Fruitland outcrop.

Annual Drilling Plan The Director shall survey the operator as to its drilling plans for 2008, and annually thereafter. The survey results shall be reported to the Commission for its consideration with respect to the conditions attached to this order.

Wildlife The operator shall notify the Colorado Division of Wildlife ("CDOW") of the location of any proposed additional well site and advise the Director of the date such notice was provided. If the Director receives comments from the CDOW within ten (10) days of the date notice was provided, such comments may be considered in applying Rule 508.j.(3)B. conditions.

Emergency Preparedness Plan The operator submitting an Application for Permit-to-Drill for a proposed additional well under this order shall file and maintain a digital Emergency Preparedness Plan ("EPP") with La Plata County. The EPP shall include as-built facilities maps showing the location of wells, pipelines and other facilities, except control valve locations that which may be held confidential. The EPP shall include an emergency personnel contact list.

Gas and Oil Regulatory Team The Director shall ensure that the La Plata County Gas and Oil Regulatory Team ("GORT") continues to meet as appropriate, but no less than semiannually. GORT meetings may be scheduled more frequently if the members believe a meeting is appropriate. (GORT includes invited member representatives from La Plata County, BLM, SUIT, industry operators and Commission. Its meetings are open and typically attended by interested area residents.)

3M Mapping, Modeling and Monitoring Project The Director shall ensure that the 3M Technical Peer Review Team is invited to meet as appropriate, but no less than semiannually to review proposals and results related to the 3M Mapping, Modeling and Monitoring Project. 3M Technical Peer Review Team meetings may be scheduled more frequently if the members believe a meeting is appropriate.

Post Completion Pressure Build-Up Tests In addition to obtaining a bottom hole pressure on all wells drilled under this order, the operator shall conduct pressure build-up tests two (2) to three (3) months after initial production begins and once every three (3) years thereafter. The operator shall provide the data acquired, an evaluation of the data and the procedures utilized to conduct the pressure build-up tests to the Director within thirty (30) days of the conclusion of each test. After reviewing the quality of the pressure buildup data and the adequacy of the geographic distribution of the data, the Director may reduce the number of wells for which pressure build-up testing is required.

IT IS FURTHER ORDERED, that the following Rule 508.j.(3)B. conditions from Order No. 112-157 shall be applied to additional wells where the surface location is proposed to be sited on lands subject to Commission jurisdiction, in addition to any requirements of applicable Commission Rules and Regulations:

Prior to approving any Application for Permit-to-Drill, the Director shall conduct an onsite inspection if the surface well location is proposed to be sited within any subdivision that has been approved by La Plata County. The Director shall conduct an onsite inspection if the surface well location is within two (2) miles of the outcrop contact between the Fruitland and Pictured Cliffs Formations and the surface owner, LGD, operator, or Director requests an onsite inspection.

Prior to approving any Application for Permit-to-Drill, the Director shall conduct an onsite inspection if the operator and the surface owner have not entered into a surface use agreement. If the reason the surface use agreement has not been executed is related to surface owner compensation, property value diminution, or any private property contractual issues between the operator and the surface owner, then no onsite inspection shall be required.

The purpose of the onsite inspection shall be to identify any potential public health, safety and welfare or significant adverse environmental impacts within Commission jurisdiction regarding the proposed surface location that may not be adequately addressed by Commission rules or orders. The onsite inspection shall not address matters of surface owner compensation, property value diminution, or any private party contractual issues between the operator and the surface owner.

When the Director conducts onsite inspections under the conditions in described in the paragraphs above, the Director shall invite the representatives of the surface owner, the operator and LGD to attend. The Director shall attempt to select a mutually acceptable time for the representatives to attend. The inspection shall be conducted within ten (10) days, or as soon as practicable thereafter, of either the date the LGD advises the Director in writing that the proposed surface well site location falls within an approved subdivision or the date the operator advises the Director in writing that a surface use agreement has not been reached with the surface owner. If requested by the operator, the Director may delay the onsite inspection to allow for negotiation between the operator and surface owner or other parties.

Following the onsite inspection, the Director shall apply appropriate site specific drilling permit conditions if necessary to prevent or mitigate public health, safety and welfare or significant adverse environmental impacts taking into consideration cost-effectiveness and technical feasibility and relevant geologic and petroleum engineering conditions as well as prevention of waste, protection of correlative rights, and promotion of development.

Examples of the types of impacts and conditions that might be applied if determined necessary by the Director include (this list is not prescriptive or all inclusive):

Visual or aesthetic impacts - moving the proposed surface well site location or access road to take advantage of natural features for screening; installing low profile artificial lift methods; constructing artificial features for screening

Surface impacts – moving or reducing the size, shape, or orientation of the surface well site location or access road to avoid disturbance of natural features or to enhance the success of future reclamation activities; utilizing an existing surface well site location or access road to avoid the impacts of new construction; utilizing a closed drilling fluid system instead of reserve pits to avoid impacts to sensitive areas.

Noise impacts – installing electric motors where practicable; locating or orienting motors or compressors to reduce noise; installing sound barriers to achieve compliance with Commission rules; confining cavitation completion operations (excluding flaring) to the hours

of 7 a.m. to 7 p.m. and notifying all area residents within one-half (1/2) mile at least seven (7) days before cavitation is commenced

Dust impacts – watering roads as necessary to control dust during drilling and completion operations

Ground water impacts – collecting and analyzing water and gas samples from existing water wells or springs; installing monitoring wells, collecting samples, and reporting water, gas and pressure data

Safety impacts – soil gas sampling and analysis; residential crawl space gas sampling and analysis; installing security fencing around wellheads and production equipment

Outcrop impacts – performing outcrop gas seep surveys; performing produced water quality analysis; periodic pressure transient testing of high water/gas ratio wells; limiting water production in wells with anomalously high water rates and water/gas ratios; funding investigative reservoir modeling under the Director's supervision

Wildlife impacts – limiting drilling and completion operations during certain seasonal time periods when specific site conditions warrant

If the operator objects to any of the conditions of approval applied above, the Director shall stay the issuance of the drilling permit and properly notice and set the matter for the next regularly scheduled Commission hearing at which time the Commission may determine conditions of drilling permit approval.

If the Director has reasonable cause to believe that any existing or proposed oil and gas operations are causing, or are likely to cause, public health, safety and welfare or significant adverse environmental impacts within Commission jurisdiction that may not be adequately addressed by Commission rules or orders, the Director may properly notice and set the matter for the next regularly scheduled Commission hearing to order appropriate investigative or remedial action. Reasonable cause may include, but is not limited to, information from the 3M Mapping, Modeling and Monitoring Project.

IT IS FURTHER ORDERED, that the provisions contained in the above order shall become effective forthwith.

IT IS FURTHER ORDERED, that the Commission expressly reserves its right, after notice and hearing, to alter, amend or repeal any and/or all of the above orders.

IT IS FURTHER ORDERED, that under the State Administrative Procedure Act the Commission considers this order to be final agency action for purposes of judicial review within thirty (30) days after the date this order is mailed by the Commission.

IT IS FURTHER ORDERED, that an application for reconsideration by the Commission of this order is not required prior to the filing for judicial review.

ENTERED this - 28th - day of May, 2008, as of May 8, 2008.

OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO

By 
Patricia C. Beaver, Secretary

Dated at Suite 801
1120 Lincoln Street
Denver, Colorado 80203
May 28, 2008