

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

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

CONSENSUS ALTERNATE PROPOSAL FOR THE RATON BASIN

Pioneer Natural Resources USA, Inc. (“Pioneer”) submits this consensus alternate proposal (“Raton Basin Proposal”) as part of and in support of its Prehearing Statement, in connection with the Colorado Oil and Gas Conservation Commission’s (“COGCC” or “Commission”) consideration of Draft Rules for oil and gas development in Colorado pursuant to House Bills 1298 and 1341 (“Draft Rules”), adopted by the Colorado Legislature in 2007. This Raton Basin Proposal is also submitted in accordance with and pursuant to the First, Second and Third Prehearing Orders, Cause No. 1R, Docket No. 0803-R-02 in this rulemaking proceeding. Pioneer is currently in discussions with other Las Animas county constituencies, such as, the Las Animas County Farm Bureau, the Las Animas County Cattlemen’s Association, the Las Animas County Landowner’s Group and the Trinidad & Las Animas County Chamber of Commerce (along with Pioneer for purposes of the discussion herein collectively known as “Parties” or “Party”), about this proposal but have not reached a final resolution.

RATON BASIN CONSENSUS ALTERNATE PROPOSAL

I. BACKGROUND

The Raton Basin in southern Colorado covers an area of approximately 2,200 square miles in southeastern Colorado and northeastern New Mexico, including Las Animas County, and is rich in coal bed methane resources. Each of the Parties to this Raton Basin Proposal represent different constituencies in the Las Animas County community. Each of the Parties benefits from the resources associated with the lands in the Raton Basin. CBM development operations, and geological/hydrogeological conditions in the Raton Basin are unique as compared to CBM operations in the San Juan Basin and the Piceance Basin. In light of these distinct aspects of the state’s CBM regions, some of the COGCC’s proposed rules are particularly burdensome and unnecessary or simply unworkable for the Raton Basin. The Parties submit this Raton Basin Proposal to address some of the shortcomings of the Draft Rules in accounting for the unique characteristics of the Raton Basin and its community.

II. BASIS FOR A RATON BASIN CONSENSUS

The Draft Rules propose sweeping changes to the existing rules and some of these rules are unnecessary for the Raton Basin. Many of the rules are unsupported by significant evidence or science demonstrating a need for revisions to the existing regulatory scheme as they apply to

the Raton Basin. The following narrative text describes an alternative approach that the Parties propose for the Raton Basin, and a partial redline of the proposed changes is either set forth in text or attached hereto in the following Schedules: Schedule I: Rule 300 Series; Schedule II: Rule 800 Series; Schedule III: Rule 900 Series; and Schedule IV: Rule 1200 Series.

This Raton Basin Alternative does not set forth all of the individual issues that each Party wishes to address. This proposal represents the Parties' agreed changes that are needed to the Draft Rules to address the unique issues associated with coalbed methane wells in the Raton Basin. The shared concerns of the Parties fall into three categories:

1. The overlap and interference of the Draft Rules with the Land Use Regulations For Oil and Gas Activity in Las Animas County and the interference of the Draft Rules with the rights of private property owners;
2. The inability of Las Animas County citizens to continue to enjoy the benefits of produced water from CBM Wells if the Draft Rules are adopted; and
3. The redundant and burdensome nature of the Draft Rules that will slow economic growth in Las Animas County and reduce the tax base.

The Draft Rules contain numerous proposed revisions that individually may seem benign but cumulatively will have substantial adverse impacts to oil and gas operations in the Raton Basin. The Parties urge the Commission to consider the cumulative costs of these Draft Rules on an industry that has become a very significant contributor to the Raton Basin economy

III. PROPOSED ALTERNATIVES

A. Rule 300 Series

A limited number of changes are suggested to the Rule 300 Series as set forth in Schedule I to address Raton basin issues, but additional changes should be considered to address the cumulative impact of these rules. The Rule 300 Series contains numerous proposed revisions that are unduly burdensome and are not needed in the Raton Basin. For instance, a gathering line is defined in Rule 100 as a *gas* gathering line. Any other gathering lines, such as produced water lines, are not exempted. Thus, new produced water flowlines, including unpressurized gravity-fed flowlines carrying CBM produced water to an injection well, a landowner pond, or a surface discharge point, all would require submittal and approval of a Form 2A. Moreover, for flowlines associated with wells, COGCC must first review and approve a completed Form 2A before approving an APD, under Rule 303.d(3)A(iv). This new administrative scheme would adversely impact all CBM wells and needlessly delay operations. This would also interfere with operators' attempts to provide landowners with CBM produced water for beneficial uses such as stock watering, and to discharge water at surface points that are helpful to landowners. The Raton Basin Proposal would exempt flow lines for produced water from the Form 2A requirement, the same as gas gathering lines.

Out of respect for the rights of private property owners and the existing Las Animas County Oil and Gas Regulations, the role of the Department of Public Health and Environment

(“CDPH”) and the Colorado Division of Wildlife (“CDW”) should be limited to a consulting role as set forth in House Bill 1298. Under Rule 303.m.4, CDPH and CDOW have an independent right to request a hearing related to the approval of Form 2 or Form 2A. These agencies by statute have a limited role of consultation with the Commission. The state’s interest is adequately represented by the Commission, which alone is charged with balancing the interests of promoting oil and gas development and protecting health, safety and welfare and wildlife resources. The Raton Basin Proposal limits the role of DPHE and CDOW to the advisory role envisioned by the statute.

Similarly, the onsite inspection under Rule 306 is intended to benefit the surface owner but the Draft Rules do not allow the surface owner to control the parties who attend or the issues considered. The Draft Rules require the surface owner to open Pandora’s Box in order to receive assistance. The Raton Basin Alternative limits the role of the Director in the onsite inspection to those issues that the surface owner wants to resolve and only allows CDPH and CDOW to participate if requested by the surface owner.

Similar changes should be made to Rule 503.b.(8) to limit the parties who can request a hearing on the approval of a Form 2A to the operator, surface owner and the local government designee. The changes to Rule 503.b(8) would be as follows:

- (8) For purposes of seeking a hearing on approval of an Oil and Gas Location Assessment, Form 2A, under Rules 216.e.(4) or 303.m.(4), any of the following may be the applicant:
 - A. The operator;
 - B. The surface owner ~~of the affected surface land~~;
 - C. The relevant local government;
 - ~~D. The Colorado Department of Public Health and Environment, solely to raise issues relating to minimizing adverse impacts to public health, safety, and welfare, including the environment or wildlife resources; or~~
 - ~~E. The Colorado Division of Wildlife, solely to raise issues relating to minimizing adverse impacts to public health, safety, and welfare, including the environment or wildlife resources.~~

Again, the CDPHE and CDOW do not need to have standing for a separate action. Their roles should be as advisors to the Commission and no more, and they can always engage the Commission and its staff as sister agencies without an express right to request a full COGCC hearing.

The Parties propose that the Raton Basin be exempted from the location restrictions and proposed performance standards in the new Rule 317B. Rule 317B is designed to address “potential” problems and risks that oil and gas development “may cause” to public water supplies even though such perceived problems and risks are “not common at this time in Colorado.” Gunderson Testimony, p. 3. This Rule unfairly singles out the oil and gas industry, and imposes standards and requirements that duplicate federal, other state and even local water quality protection standards and requirements that already apply in the Raton Basin.

Water Quality Control Division staff take the position that Rule 317B will not inhibit the industry's efficient development of oil and gas resources because of the availability of current directional drilling technology. Gunderson Testimony, p. 6. Such a position ignores the costs and burdens of directional drilling programs and, more importantly, fails to consider that the nature of the geologic formations and the natural gas recovery process associated with CBM development makes directional drilling impossible in the Raton Basin.

B. Rule 608

Through these rules, COGCC attempts to improperly apply a distinct set of rules and performance standards (in particular, those rules and standards promulgated under COGCC Order No. 112-157 tailored to the San Juan Basin) to all CBM basins in Colorado. By doing this, COGCC disregards the fact that the Raton Basin varies significantly from the San Juan Basin by geology, hydrology, water quality and by the potential for gas seeps. As established in the Pioneer Prehearing Statement, the water produced from CBM wells in the Raton Basin is good quality water that is used for ranching, agriculture and other beneficial uses. The additional regulatory burden is unnecessary in the Raton Basin. *See* Pioneer Prehearing Statement at page 12 and Pioneer Rebuttal Statement. COGCC also already has the means to tailor monitoring plans to specific conditions in a basin. The Parties urge the Commission to exempt the Raton Basin from the provisions of draft Rule 608.

C. Rule 800 Series

The Rule 800 series addresses visual mitigation, odors and fugitive dust. The Raton Basin Alternative for the Rule 800 Series is attached as Schedule II. The suggested changes for the Raton Basin focus on the following:

1. The lack of odor complaints associated with methane produced from CBM wells make the regulations associated with odors under Rule 805 unnecessary and burdensome.
2. The visual mitigation measures under Rule 803 should give consideration to the surface owner concerns and the Las Animas County Oil and Gas Regulations.
3. The green completion practices do not account for unique completion practices for CBM wells and are inappropriate for the Raton Basin and CBM production generally.

See Pioneer Prehearing Statement at page 29.

D. Rule 900 Series

By severely restricting and, in many cases, eliminating use of unlined pits, the Draft Rules effectively abolish with no resulting environmental benefits, an important water management and disposal method implemented in the Raton Basin where produced water is suitable and routinely used for stock and wildlife watering, non-potable domestic use, fire suppression, and ground water recharge. *See* Las Animas County Prehearing Statement at page 3 and Pioneer Prehearing Statement at page 10. The Draft Rules encourage oil and gas operators

to inject good quality produced water into deep formations for disposal rather than placing such water in dispersed constructed pits or ponds for the ultimate benefit of farmers, ranchers and even plants, animals and wildlife in the Raton Basin. The Draft Rules would also eliminate a potential source of recharge water in the Raton Basin that can offset stream depletion in overappropriated basins.

The Raton Basin Alternative for the Rule 900 Series is attached as Schedule III and addresses many of these concerns by allowing unlined pits for CBM produced water, limiting the use of berms around CBM produced water pits and exempting CBM produced water pits from the requirements to treat pit water to control bacteria, odor and insects.

Under draft Rule 907.f, “Other E&P Waste” does not allow for the disposal of “pigging wastes from gathering and flow lines” into an injection well, but requires its disposal at a commercial solid waste facility or a centralized E&P waste facility. Routine pigging of CBM gathering lines occurs to remove the produced water that settles at low points in the line. This draft rule is inconsistent with other COGCC and state regulations, and federal regulations that allow for the disposal of CBM produced water into Class II UIC wells. The federal UIC program is specifically designed to allow for disposal of this kind of waste. The Raton Basin Alternative remedies this oversight.

E. Rule 1002

The proposed stormwater management requirements are duplicative and unnecessary, and where different from CDPHE stormwater permitting and EPA SPCC requirements, create two potentially inconsistent compliance standards for which Raton Basin operators would need to comply. Accordingly, all the proposed stormwater requirements in Rule 1002.f should be inapplicable to the Raton Basin. In the alternative, the specific proposed provisions should be made consistent with CDPHE stormwater permitting and federal SPCC requirements that oil and gas operators in the Raton Basin already must meet.

F. Rule 1200 Series

The Parties have previously expressed their concerns that the 1200 series of rules regarding wildlife resources are overly restrictive and interfere with landowner private property rights. Pioneer has voluntarily undertaken a significant wildlife study in the Raton Basin. This type of tailored, investment approach on a basin-specific basis is a more beneficial and economic than the bureaucratic regulatory approach presented in the Draft Rules. The rules should be altered to establish a procedure that would allow operators to mitigate the effects of oil and gas operations on wildlife resources through a mitigation banking program, or through the use of best management practices as an alternative to mitigation. The Parties ask that the Commission consider the approach suggested by Bill Barrett Corporation in its Prehearing Statement as a more creative approach and one that is similar to the successful investment made by Pioneer in wildlife resources in the Raton Basin.

If the approach for managing wildlife habitat as reflected in the Draft rules is retained, then serious consideration should be given to changing the universal set back rule under Rule 1209.b.(16). 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. *See* Pioneer Prehearing Statement at page 34. The Raton Basin Alternative sets forth one suggested alternative in Schedule V attached hereto.

IV. CONCLUSION

Pioneer has conducted its operations in the Raton Basin in a manner that balances the needs of the oil and gas operator with protection of the health, safety and welfare of all citizens. The Las Animas County Commissioners have been engaged in this balancing effort through the implementation of the County Oil and Gas Regulations. The county commissioners, local landowners and local producers understand the issues arising in the Raton Basin and Pioneer and the other parties who will eventually be a part of this consensus proposal respectfully request that the Commission give serious consideration to adopting amendments to the Draft Rules as suggested herein to address the unique issues in the Raton Basin.

Dated this 6th day of June, 2008.

Respectfully submitted,

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ATTORNEYS FOR PIONEER NATURAL
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CERTIFICATE OF SERVICE

I hereby certify that one original true and correct copy of the attached **FINAL PREHEARING STATEMENT OF PIONEER NATURAL RESOURCES USA, INC** was served by courier delivery on the 6th day of June 2008, and filed with the Colorado Oil and Gas Conservation Commission, as follows:

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

and further certify that one true and correct copy of said petition was also served by courier delivery on the 6th day of June to:

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

Joshua Epel
Assistant General Counsel
DCP Midstream
370 Seventeenth Street, Suite 2500
Denver, Colorado 80202

and also further certify that electronic or paper copies of said petition were delivered to:

Marc Fine at marc.fine@state.co.us
Kelly Rees at Kelly.rees@state.co.us
and the other Parties of record in this rulemaking

/s Linda Bondar _____