

**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)

ROSEWOOD RESOURCES, INC.'S

REBUTTAL STATEMENT

COMES NOW Rosewood Resources, Inc. (hereinafter "Rosewood"), by and through its counsel, Beatty and Wozniak, P.C. and for its REBUTTAL STATEMENT states as follows:

Introduction

The Commission, in a rule-making proceeding, is constrained by the statutory requirements when promulgating its rules. Among the statutory elements is the requirement that the record demonstrate a need for promulgating the rule. Rosewood submits that the record before this Commission does not support the statewide application of these rules especially as the Draft Rules would apply to Yuma County. There is no information in the record that demonstrates a need for rule changes in Yuma County. In fact, only one prehearing statement contains any reference to Yuma County and that reference does not point to any problem. The staff simply has ignored the entire area covered by Rule 318B in its "support" for the rule changes. There is however, ample evidence before the Commission that the application of these rules will harm the economic interests of Yuma County and the small businesses that rely on the oil and gas industry for its livelihood. As a result, these rules, if promulgated, should not include Yuma County because the record does not demonstrate a need for these rules in Yuma County.

Restatement of Arguments in Prehearing Statement

Rosewood restates by reference the arguments contained in its Prehearing Statement that the existing rule 318B is more specifically tailored to oil and natural gas development in the eastern DJ Basin. 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, Rosewood submits that the record before the Commission in this proceeding fails to even address, let alone demonstrate, a need for these rules in Yuma County.

Commission Must Weigh Record Before Promulgating Rules

Pursuant to C.R.S. § 24-4-103 (b) (I)-(V), this Commission must make a determination in this proceeding based upon a number of 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. For the reasons set forth below, the record before the Commission fails to demonstrate a need for new rules statewide.

The record does not contain any justification that rules which are meant to protect Western Slope wildlife need changing in Yuma County. In fact, there is no evidence propounded in the record about problems with oil and natural gas development in Yuma County Colorado. Only one staff member even makes reference Yuma County in the nearly 1,000 pages of testimony and supporting exhibits before this Commission. That reference cite no identified health, safety, or welfare, including protection of wildlife resources, issues as needing addressed by the Commission. However, there is ample evidence that the current rules work in that part of the state. (See prehearing statements of Berry Petroleum, Rosewood, Yuma County, Sue M. Jarrett.) This evidence outweighs the need to apply these rules in the northeast part of the state. As a result, the proposed alternative for Yuma County under rules 318B or in the alternative for both 318A and 318B should be adopted by this Commission to deal specifically with these areas. That way, the proposed rule changes can focus upon the areas where the issues have been identified.

The Commission is required to recognize that no evidence has been proffered by staff to support that Yuma County operations should be required to drill directionally “where feasible” to minimize commutative impacts and impacts on wildlife as required in Rule 1002d. The staff is apparently quite concerned with white-tailed and black-tailed prairie dog colonies (See Rule 1202 2.b.A. and B.) and requires surveys and mapping. The staff has ignored: the agricultural nature of Yuma County operations, the shallow Niobrara formation wells which do not permit directional drilling, the truck mounted coil tubing rigs which often drill wells in less than two (2) days and the fact that neither the surface owners nor Yuma County itself deem the prairie dogs worthy of preventing their agricultural development or preventing gas development. In fact, as much as staff wants to stop economic development and agricultural development on private farmland, the prairie dogs are pests and impediments to traditional private land uses in these farming communities.

Another factor that is important for this 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 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, this Commission must 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 no evidence proffered in support of the Draft Rules that reconciles the conflicts 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. *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. 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 surface use agreements, private mineral interests and other landowners. From a policy standpoint, this confusions and the application of these Rules will likely flood the court system in Colorado with claims by private landowners, mineral interests owners and lessees.

Cost Benefit and Regulatory Analysis

COGCC performed a Cost Benefit and Regulatory Analysis. The COGCC Cost Benefit and Regulatory Analysis ("CBRA") grossly underestimates the impact these rules will have on the oil and gas industry in Colorado and fails to even address Yuma County. This analysis is deficient in many ways as outlined by COGA, in their testimony and rebuttal statement that includes an analysis of the CBRA and the COGA analysis.

Surface Drinking Water Setbacks – Rule 317B and Rule 1209.b (16)

The Colorado Environmental Coalition cites an EPA study that inspected oil and gas sites throughout the west for violations. However, the report supports the fact that existing regulatory mechanisms work and the any matters were properly addressed. There is nothing in the report that indicates ongoing pollution of water associated with these activities. In fact, other than newspaper articles and reports prepared by anti-industry organizations, there is no real factual support for the need to exclude large areas of private property from development. Nor is there support for pitless drilling.

Nothing in the record before the Commission demonstrates that existing rules will not protect surface drinking water supply areas. There is no evidence of widespread pollution associated with oil and gas activities. Many cases mentioned have been remediated and closed which indicate that the existing Rules work to remediate damage and deter operators.

Adjacent Landowner Standing – Rule 503.b.8

The Colorado Environmental Coalitions ("CEC") urges this Commission to provide standing to adjacent landowners for appealing drilling permits or requesting a hearing before the Commission. CEC at 24. As a basis for standing, CEC cites zoning statutes to support their argument. However, that law clearly provides standing for those individuals. The Oil and Gas Conservation Act does not provide standing for adjacent landowners to inhibit mineral owners in this state from legally developing their property. Notwithstanding this, adjacent landowners do have legal recourse against an operator through the court system which deals with property disputes through nuisance and other property laws. The Oil and Gas Commission is not the venue to litigate adjacent surface owners' concerns over oil and gas operations.

Further, the OGCA specifically provides the authority for notification of surface owners when drilling operations are going to begin. C.R.S. § 34-60-106(14). Because the Commission is limited to the authority granted to it by the legislature, additional notification of drilling operations would violate its statutory authority.

CEC further states that surface owners typically do not have the time, expertise or resources to challenge oil and gas operations unless it is close enough to severely affect them and they can offer a realistic alternative. CEC at 27. On the one hand, CEC is saying that landowners do not have the expertise to challenge permit decisions. However, apparently landowners do have the expertise to provide realistic alternatives to oil and gas drilling locations. This is patronizing and contradictory. Typically, locations are driven by the need to access the subsurface geology and “realistic alternative[s]” offered by the landowner are not likely to work in a technical sense. Where an operator seeks an exception location from existing spacing rules, adjacent mineral owners are given an opportunity to participate in the hearing if they are going to provide technical information contradicting the technical information submitted by the operator. Surface issues are a different matter to be worked out between the private parties.

1000’ Setbacks – Rule 603

The Setbacks from residential dwellings is not properly noticed before the Commission. Raising this issue now in these proceedings calls into question whether this issue is validly before the Commission since it is not within the scope of rules contemplated by this rulemaking. However, notwithstanding this, the reasons for the setback are not supported by the record before the Commission because there is no evidence in the record that setbacks are a problem in Yuma County.

Wildlife Rules – 1200 Series

The rules further fail to address pre-existing disturbances such as roads, agricultural operations, all-terrain vehicle activity, to name a few. Some areas where oil and gas activity is taking place already have significant disturbances to which species have adjusted.

In addition, it is unclear whether timing restrictions will allow an operator to access properties not covered by timing restrictions via properties containing such restrictions.

Alternative Proposal

Rosewood also endorses the Yuma County Alternate Proposal submitted to the Commission addressing the unique aspects of development in Yuma County and reserves the right to comment upon and support this consensus proposal with its previously endorsed witness or any others that may be necessary for this purpose.

Staff Clarifications Create Confusion for Commissioners

Rosewood objects to the filing of the FIRST RECOMMENDED CLARIFICATIONS OF DRAFT RULES on both procedural and substantive grounds. These clarifications were not

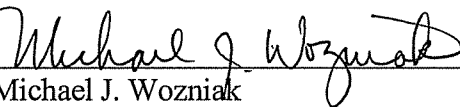
timely promulgated but merely posted on the website in an electronic file that contained the draft rules with the clarifications at the end. Since that time, the file has been changed. However, there was never any actual notice of these clarifications either through a Colorado Register publication nor through a simple email to all the parties. This practice of just posting orders and changes to the website has become a common occurrence in these proceedings.

Rosewood further objects to the clarifications in that they contain new terms and may change the interpretation of these rules. This will create significant confusion to the Commission as they read the already voluminous record. For example, comments in one party's prehearing statement may be different based on the rebuttal statement. Thus, reconciling the matter might be confusing to the Commissioners given the constrained time commitment of the rule-making process.

Endorsement of other Rebuttal and Incorporate by Reference

To the extent an issue has not been addressed in this rebuttal statement, Rosewood hereby endorses and incorporates here in by reference the arguments of the Colorado Oil and Gas Association (COGA) in its Rebuttal Statement.

Respectfully submitted this 6th day of June, 2008.

By: 
Michael J. Wozniak
Andrew A. Bremner
Beatty & Wozniak, P.C.
216 16th Street, Suite 1100
Denver, Colorado 80202
(303) 407-4499

Attorneys for Rosewood Resources, Inc.

CERTIFICATE OF SERVICE

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

Original and 15 copies delivered to:
Patricia Beaver, Hearing Manager
Docket No. 0803-RM-02
Oil and Gas Conservation Commission
1120 Lincoln Street, Suite 801
Denver, CO 80203

Two copies hand-delivered to:
Kelly Rees
Colorado Department of Law
1525 Sherman Street, 7th Floor
Denver, CO 80203

Electronic copy to Patricia Beaver
Tricia.Beaver@state.co.us

Electronic copy to Kelly Rees:
Kelly.Rees@state.co.us

Electronic copy to Joshua Epel:
jepel@dcpmidstream.com

Electronic copy to Marc Fine:
marc.fine@state.co.us

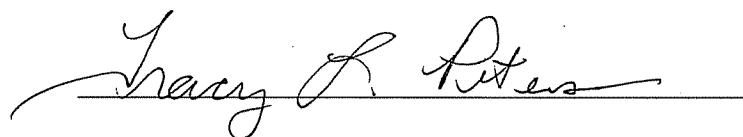
Electronic copies to the following parties:

| | |
|--|--|
| Dugan, Thomas P. Baumgarten, David Barker, Bruce T. Kelly, Jonathan M. Earles, T. Andrew Collins, Meg Wonstolen, Ken Robbins, Jeff Allott, Gordon L. Wasylenky, Kelsey H. Chapman, Richard H. Abernathy, Robert S. Siple, David W. | tpdugan@dugan-law.com dbaumgarten@gunnisoncounty.org bbarker@co.weld.co.us jkelly@wrightwater.com aeearles@wrightwater.com Meg.Collins@coga.org kwonstolen@fulbright.com robbins@grn-law.com gallott@kpk.com kwasylenky@kpk.com rhchapman@americanroyaltycouncil.com rsa@chieftainroyalty.com dsiple@mcelvain.com |
|--|--|

| | |
|--|--|
| Aldridge, Susan | saldridge@bwenergylaw.com |
| Taraba, Gary | gary_taraba@rosewd.com |
| Wozniak, Michael | mwozniak@bwenergylaw.com |
| Gustafson, Dennis | dennis.gustafson@petro-canada.com |
| Keefe, Bill | wkeefe@bwenergylaw.com |
| Little, David R. | dlittle@bjorklindley.com |
| Mathes, Robert C. | rmathes@bjorklindley.com |
| jjordan@garfield-county.com | jjordan@garfield-county.com |
| Jordan, Judith H. | jjordan@garfield-county.com |
| McCown, Larry | jjordan@garfield-county.com |
| Montoya, Jim D. | lasanimascounty@sensonics.org |
| Zwick, Steven J. | attorney@sanmiguelcounty.org |
| Redora, Mayor Joseph | anna@historictrinidad.com |
| Graham, Gary | ggraham@audubon.org |
| Nickum, David | dnickum@tu.org |
| Saul, Michael | saul@nwf.org |
| James, Ivan | ijamesii@comcast.net |
| Schindler, Ronald | Ronald.Schindler@pxd.com |
| Still, Jay | Jay.Still@pxd.com |
| Peterson, David | davep@flatironenergy.com |
| Robinson, Ingrid | Ingrid.Robinson@halliburton.com |
| Dechant, Lyle | lyle.dechant@mesacounty.us |
| Madison, Jeff | jmadison@co.rio-blanco.co.us |
| Parsons, Ken | kparsons@co.rio-blanco.co.us |
| Shipps, Thomas H. | tshipps@mbsslpl.com |
| Jacus, John R. | john.jacus@dgslaw.com |
| Burse, Sherry H. | sherry.burse@dgslaw.com |
| Hack, Peter J. | peter.hack@dgslaw.com |
| Wingfield, Dean | deanwingfield@hotmail.com |
| Yuma County | adminlanduse@co.yuma.co.us |
| Pearce, W. Perry | Perry.Pearce@conocophillips.com |
| Boigon, Howard L. | HLBoigon@HHLAW.com |
| Biever, Jennifer L. | jlbiever@hhlaw.com |
| Schuller, Tisha Conoly | Tisha.schuller@tetrattech.com |
| Pastor, Dan | dan.pastor@tetrattech.com |
| Shaeffer, Harold B. | hhschaef@rof.net |
| Blieszner, Diane | diane.blieszner@EnCana.com |
| SSullivan@wsmtlaw.com | ssullivan@wsmtlaw.com |
| Zogg, Paul | pzogg@acweb.com |
| Faber, Steve | sfarber@bhfs.com |
| Dunn, Jason | jdunn@bhfs.com |
| O'Neill, Suzanne | cwfed@coloradowildlife.org |
| Smith, Mike | mike.smith@questar.com |
| Schnee, Daniel J. | daniel.schnee@el paso.com |
| Whitmore, Martha Phillips | mwhitmore@pattonboggs.com |
| Savit, Mark N. | msavit@pattonboggs.com |

| | |
|--------------------------|--|
| Turner, Ima D. | idtturner@marathonoil.com |
| Searle, F. David | fdsearle@marathonoil.com |
| List, Eileen | eileenL@gjcity.org |
| Brown, David R. | browndr1@bp.com |
| Monahan, Timothy J. | tim.monahan@state.co.us |
| Freeman, Michael S. | mfreeman@earthjustice.org |
| Angell, James S. | jangell@earthjustice.org |
| Chiropolos, Michael | mike@westernresources.org |
| Jarrett, M. Sue Sheridan | jarrettsranch@hughes.net |
| Becker, Jeff R. | jrbecker@hollandhart.com |
| Newland, Tasha M. | tmnewland@hollandhart.com |
| Basi, Raj | raj.basi@williams.com |
| Lane, Ann | ann.lane@williams.com |
| O'Connor, Davis O. | doconnor@hollandhart.com |
| Bailey, Rick D. | rbailey@hollandhart.com |
| Anderson, Daniel G. | dga@bry.com |
| Nanfelt, Rob | rob@hbacolorado.com |
| Moody, Robert F. | rmoody@naiop-colorado.org |
| Feurestein, Randall J. | rfeuerstein@duffordbrown.com |
| Koenig, Shanna B. | qqwater@colorado.net |
| Karstaedt, Randall | rkarstaedt@fs.fed.us |
| Eckberg, Carleton | cekberg@bhep.com |
| Niebrugge, Sam | sam.niebrugge@dgsllaw.com |
| Gilbert, Alan | alan.gilbert@hro.com |
| Clark, Phillip | phillip.clark@hro.com |
| Brown, Reeves | rbrown@club20.org |
| Frankhauser, Terry R. | terry@coloradocattle.org |
| Bredenkamp, Troy | tbredenkamp@colofb.com |
| Sponsler, Mark | msponsler@coloradocorn.com |
| Hammerich, Bill | bhammerich@coloradolivestock.org |
| Herzbert, Brock | bherzberg@westerndairyassociation.org |
| Steinke, Ivan | isteinke@coloradolivestock.org |
| Swenson, Leland | leland.swenson@rmfu.org |
| Kitchen, Biran G. | chc@coloradohorsecouncil.com |
| Sperry, Joe | cwgawool@aol.com |
| Flaherty, Stephen A. | sflaherty@nobleenergyinc.com |
| Cook, Joe (Rusty) E. | rusty.cook@energen.com |
| Salapich, Gary | salapich@gmail.com |
| Salapich, Karen | Salapich@hotmail.com |
| McDonald, Warren | Forest_Management@yahoo.com |
| Oatman, Dean | dean.oatman@colostate.edu |
| Verquer, Tom | tjv2@earthlink.net |
| Seman, Jep | jseman@hke-law.com |
| Nichols, Jeremy | rmcleanair@gmail.com |
| Case, Randall M. | rcase@popllc.com |
| Campbell, Scott M. | scampbell@popllc.com |

| | |
|-------------------------|--|
| Swartzendruber, Nick A. | nswartzendruber@popllc.com |
| Comstock, Jeff | jcomstock@moffatcounty.net |
| Walker, Jim | rock-n-roll@mindspring.com |
| Walker, Ron | petron@mindspring.com |
| Pacheco, Kim | kimpacheco@comcast.net |
| Moltrer, Glenn | grmolts@yahoo.com |
| Nash, Clyde | clyde.nash@yahoo.com |
| Hughes, Kirby | kirby.hughes@rmc.sierraclub.org |
| Wells, Steven T. | joshwells99@aol.com |
| Bedingfield, Jeffrey T. | jbedingfield@wobjlaw.com |
| Gibbons, Ben | bengibb@amigo.net |


Tracy R. Peters