

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

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

**BOARD OF COUNTY COMMISSIONERS OF GUNNISON COUNTY, COLORADO,
BOARD OF COUNTY COMMISSIONERS OF LA PLATA COUNTY, COLORADO,
BOARD OF COUNTY COMMISSIONERS OF SAN MIGUEL COUNTY,
COLORADO AND NORTHWEST COLORADO COUNCIL OF GOVERNMENTS**

**JOINT REBUTTAL STATEMENT REGARDING THE DRAFT RULES
PUBLISHED APRIL 10, 2008 (31 COLO. REG. 4)**

The Board of County Commissioners of the County of Gunnison, Colorado (“Gunnison County”), by and through David Baumgarten, the Board of County Commissioners of the County of La Plata, Colorado (“La Plata County”), by and through Jeffrey Robbins, the Board of County Commissioners of the County of San Miguel, Colorado (“San Miguel County”), by and through Steven J. Zwick, and Northwest Colorado Council Of Governments (“NWCCOG”) by and through Barbara Green, (jointly, the “Parties”) respectfully submit this Joint Rebuttal Statement Regarding Draft Rules And Regulations Of The Oil And Gas Conservation Commission Of The State Of Colorado, published April 10, 2008 (31 Colo. Reg. 4).

EXECUTIVE SUMMARY

A significant component of these Parties’ presentations is that, in addition to effectively implementing HB 07-1298 and HB 07-1341, the Commission’s new rules not affect local government’s existing authority over oil and gas operations.

The legislation being implemented, HB 1298 and HB 1341, and all previous legislation granting authority to this Commission, specifically recognized the historic land use authority granted to local governments. Because the Draft Rules are a comprehensive amendment to comply with the House Bills, as opposed to the Commission’s past focus on technical, “down hole” issues, it is entirely appropriate and, indeed, necessary for the Commission to specifically recognize local land use authority over oil and gas operations within its Rules. This can be accomplished by adopting the Parties’ proposed Rule 201, Effective Scope of Rules and Regulations, and the Draft Rule 521 Memorandum of Agreement process as set forth below. By doing so, the Commission will have carried out the directive of the Legislature that existing local authority is not affected by the Commission’s Rules. Furthermore, the Commission will have established, for the first time, a collaborative regulatory process by which the state agency and local governments can work together in a manner that protects public health, welfare, safety and the environment balanced

with and allows the efficient and effective recovery of the natural resources.

To ensure effective implementation of HB 07-1298 and HB 07-1341, this Joint Rebuttal also recommends amendments to four Proposed Rules:

- I. Rule 305(b)(1) NOTICES OF OIL AND GAS OPERATIONS;
- II. Rule 306 b. CONSULTATION WITH LOCAL GOVERNMENTS;
- III. Rule 317 B. PUBLIC WATER SYSTEM SOURCE WATER ASSESSMENT AREA PROTECTION; and
- IV. Rule 521. MEMORANDUM OF AGREEMENT WITH LOCAL GOVERNMENTS.

I. RULE 305(b)(1) NOTICES OF OIL AND GAS OPERATIONS.

A. STATE'S RATIONALE. The proposed changes to the existing regulations are intended to provide to the public as well as state health and wildlife agencies, notice of oil and gas operations, so that timely comment can be made.

B. OBJECTIONS BY OTHERS. Various parties, in addition to the undersigned, have objected that the method of publication of the notice (i.e. limited to COGCC website, surface owner and adjacent landowners) within 500 feet of the proposed location, is not sufficient.

C. PARTIES' REBUTTAL. The parties to this rebuttal agree with the objections. Rule 305(b)(1)(A)(i) does not provide adequate notice to local governments or the public of proposed oil and gas well locations. Rather, the effect of the draft Rule is to place the practical burden on the local governments and the public to seek out, daily, notices on the COGCC website.

We suggest that affected counties and municipalities within whose boundaries oil and gas facilities are proposed to be located receive a copy of the Form 2A either in hard copy or electronically, as soon as COGCC staff determines it to be complete. Further, we suggest that there be a requirement placed on the applicant and/or COGCC to provide regular, periodic notice of submittals in the County's legal newspaper(s) in the location of the proposed activity. This could be accomplished by notices regularly published every other week, or – as is done with Water Court resumes – once every month.

II. RULE 306b. CONSULTATION WITH LOCAL GOVERNMENTS.

A. STATE'S RATIONALE. Rule 306b. is intended to provide an opportunity for consultation with local government.

B. OBJECTIONS BY OTHERS. Various parties, in addition to the

undersigned, have objected that the time frame in which to request a consultation (7 days) is too short for reasonable analysis; for instance, Garfield County notes that it “literally receives hundreds of APDs per month.”

C. PARTIES’ REBUTTAL. The undersigned agree with the objections and, further, note:

1. Rule 306.b.(1) does not provide for a local government designee consultation for the location of roads, production facilities and well sites before a permit is approved, but only before operations with heavy equipment commence; this puts both the operator, the local government and the public at disadvantage if modifications are required. The undersigned suggest pre-permit approval consultation.

2. Rule 306.b.2. affords a local government only seven days (which by the Rule definition does not exclude weekends or holidays) from notice of an application pursuant to Rule 305 (i.e. it appears on the COGCC website) to request a consultation; this is not adequate. The undersigned suggest a minimum of fourteen days.

3. The Rule 306.b.2. consultation does not appear to be directly with the COGCC or its staff, but rather must go through the CDPHE and its staff, with no direct Local Government Designee access to the COGCC or staff. In sum, no landowner in the state other than the surface owner has access to a COGCC pre-approval consultation. At a minimum, adjacent landowners should be able to request a consultation. Every other landowner or citizen in a County is limited to access to the COGCC by being shunted to the Local Government Designee who itself is shunted to the CDPHE, and must make that request in seven calendar days. And even then, the basis of concerns is limited by the Rule to exclude local land uses and wildlife. This process will have the effect of excluding public input rather than obtaining it; it is not a “timely and efficient” process.

III. RULE 317 B. – PUBLIC WATER SYSTEM SOURCE WATER ASSESSMENT AREA PROTECTION.

A. STATE’S RATIONALE FOR RULE 317 B. The proposed changes to the existing regulation respond to legislative mandates included in HB 07-1341, which direct the COGCC to promulgate rules, in consultation with the CDPHE to protect the health, safety and welfare of the general public in the conduct of oil and gas operations. C.R.S. 34-60-106(11)(a)(II).

The proposed changes were designed specifically to prevent oil and gas operations from polluting classified surface water supply segments for a distance of five miles upstream of public water system intakes that supply drinking water to over 4,700,000 Coloradans, or about 85% of Colorado’s total population.

B. OBJECTIONS BY OTHERS TO RULE 317 B. Various parties have

objected to Rule 317 B asserting that:

1. The 5 mile area is “arbitrary”;
2. The Rule should be imposed only on “post construction surface disturbance” from oil and gas operations.
3. The mandate to collect “baseline surface water data” should be more limited than in the draft Rule;
4. The Rule should be modified to exclude existing facilities and, under certain circumstances, expansion of these existing facilities.
5. The variance opportunity should be expanded.

C. PARTIES’ REBUTTAL.

1. The 5 mile area is not arbitrary; rather it corresponds to the area authorized by statute for protection by municipalities of municipal watersheds. See: 31-15-707(1)(b), C.R.S.

2. Limiting the imposition of the Rule only to “post construction surface disturbance: would not effectively reduce the potential for contamination of public drinking water from construction or post construction contaminant releases.

3. The mandate to collect baseline surface water data, pre- and post-construction ought to remain as drafted.

4. A carefully crafted modification of the Rule to affirmatively allow expansion of existing facilities, under certain prescribed circumstances and with prescribed physical, mechanical, special and directional requirements, should be explored.

5. The existing variance language should remain intact.

6. In addition, the undersigned agree with the City of Grand Junction rebuttal Statement that:

a. A requirement be added that public drinking water suppliers be notified when oil and/or gas operations are proposed for development on lands that serve as sources of public drinking water supplies;

b. Explicit language be added that will ensure that the proposed Rule is not construed as an express or implied preemption of municipal watershed authority;

c. Support for the use of pitless drilling systems in Colorado

Department of Public Health and Environment – designated surface water drinking supply areas;

d. Endorsement for the use of only non-toxic fluids for hydraulic fracturing in surface water drinking supply areas;

e. Requiring operators to pay for additional state or third-party monitoring to ensure compliance with COGCC and local rules; and

f. Requiring clear enforcement mechanisms and remediation measures if post-drilling water samples reveal contamination of source waters. There should be a rebuttable presumption in the rules that if post-drilling water samples indicate contamination from an oil/gas well that the closest well to the sampling location will be presumed to be the source of the contamination unless its owner or operator proves that another well or facility is the source of the contamination.

7. In addition, the COGCC should consider whether the buffer should be increased to at least 1,000 feet.

8. In addition, the COGCC should consider imposing certain of the Rules protections to individual domestic drinking water wells.

IV. RULE 521 – MEMORANDUM OF AGREEMENT WITH LOCAL GOVERNMENTS.

A. STATE’S RATIONALE FOR RULE 521. Proposed Rule 521 sets out a process by which the COGCC might enter into memorandum of agreement with a local government to clarify, coordinate, and harmonize the relationships between the Commission’s rules and the regulations or ordinances of that local government.

B. OBJECTIONS BY OTHERS TO RULE 521. Various parties have objected to Rule 521 asserting, generally, that:

1. The Rule is not required by HB 07-1298 and HB 07-1341;
2. The COGCC does not have authority to enter into a Rule 521 Memorandum of Agreement; and/or
3. The Rule might be used as a vehicle to decrease the authority of the COGCC or, conversely, increase the authority of local governments

C. PARTIES’ REBUTTAL. The objections misapprehend the intent and potential benefits of Rule 521.

1. The COGCC, local governments, the industry and the public all will benefit from the proposed Rule because it facilitates the early and collaborative resolution of potential jurisdictional issues through the

negotiation and approval of memoranda of agreement between the COGCC and local governments.

2. As support for this approach, it is axiomatic that local governments have express authority and jurisdiction to regulate the land use aspects of oil and gas operations.

Historically, Counties derive their authority to govern local land use issues by way of a direct grant from the legislature. Several statutes create this authority, the earliest of which, the county zoning enabling statute, dates to 1939, while the Local Government Land Use Control Enabling Act § 29-10-101, C.R.S. et. seq., was enacted in 1974. For instance, C.R.S. § 29-20-104 provides local governments with broad authority to regulate and plan for the use of land. Similarly, C.R.S. § 30-28-102 provides that Counties are authorized to provide for the physical development of the unincorporated territories in the State.

These statutes provide broad authority to Counties to regulate land use and development within their respective jurisdictions. See Board of County Commissioners, La Plata County v. Colorado Oil and Gas Conservation Commission, 81 P.3d 1119, 1123 (Colo. App. 2003). This authority is a legally protected interest that may not be infringed upon by any other governmental entity absent an express preemption right that is granted by the legislature. *Id.* at 1123-1124; Douglas County Bd. of Comm/RS v. Public Utilities Commission, 829 P.2d 1303, 1309 (Colo. 1992).

3. The Parties recognize that this local authority, because it is derived as a grant from the legislature, can be preempted by the State in areas where the legislature believes it is appropriate. This has not occurred with regard to the State's regulation of oil and gas operations. The Colorado Supreme Court has expressly held that the original enactment of the Oil and Gas Conservation Act (the "OGCA") did not preempt county land use regulatory authority. Board of County Commissioners, La Plata County v. Bowen/Edwards, 830 P.2d 1045, 1058 (Colo. 1992). The Court stated: "[t]he Oil and Gas Conservation Act does not expressly preempt any and all aspects of a county's land-use authority of those areas of the county in which oil and gas activities are occurring or are planned." The Bowen/Edwards court also held that the OCGA neither expressly nor impliedly intended "to preempt all aspects of a county's land-use authority over land that might be subject to oil and gas development or operation." *Id.*

Id. at 1059; See also Voss v. Lundvald Brothers Inc., 830 P.2d 1061, 1068-1069 (Colo. 1992).

4. In subsequent amendments to the OGCA, the legislature has continued to make it clear that it does not intend for the OGCA to expressly or impliedly preempt local government land use regulatory authority. For example, the legislative declaration preceding the 1994 amendments to the OGCA, stated that "nothing in this Act shall be construed to affect the existing

land use authority of local governmental entities.” 94 Colo.Sess.Law, Ch 317 § 1.

Similarly, the language contained in each of the 2007 Acts upon which the COGCC’s draft rules are based also makes it clear that there was no legislative intent to preempt local authority to regulate land uses of local concern. For example, H.B. 07-1298 includes a clause within the new Section 34-60-128 (granting the COGCC authority to enact rules to protect wildlife resources) specifically providing that “nothing in this section shall establish, alter, impair or negate the authority of local and county governments to regulate land use related to oil and gas operations.” 07 Colo.Sess.Law, Ch 312 § 2. Similarly, the legislative declaration preceding H.B. 07-1341 provides that “nothing in this Act shall establish, alter, impair or negate the authority of local governments to regulate land use related to oil and gas operations.” 07 Colo. Sess. Law, Ch 320 § 1.

5. The Parties respectfully submit that the implementing legislation mandates the COGCC to address the relationship between local land use authority and the newly enacted state authority.

First, the Parties request the Commission to expressly recognize within its Rules the existence of local regulatory authority over the land use aspects of oil and gas operations by adopting the alternative proposed language for Rule 201(b) which was contained in these Parties direct testimony. For the Commission’s reference, the Parties again submit the following language for adoption by the Commission as a new final sentence to Rule 201:

The Commission acknowledges that local governments have authority to regulate land use, environmental and surface aspects of oil and gas operations, that legislation and case law expressly recognize and preserve local government regulation of the land use, environmental and surface aspects of oil and gas activities and that the State rules do not preempt, either expressly or implicitly, local government land use, environmental or surface regulations over oil and gas operations, provided such regulations are at least as strict as the regulations contained within these Rules. A local regulation may be preempted by operational conflict if its application materially impedes or destroys the State’s interest in the effective recovery of the natural resource. The land use, environmental and surface regulations contained within these Rules are meant to and shall serve as minimum statewide standards and shall be applicable in those areas where a local government has not enacted land use, environmental and surface regulations over oil and gas operations which are at least as stringent as these statewide minimum standards.

Second, Draft Rule 521, Memoranda of Agreement with Local Governments is an innovative but simple change that will foster accurate, complete and coordinated reviews of proposed projects. The COGCC, local governments, the industry and the public all will benefit

from the proposed Rule.

Contrary to industry objections to the Rule, pursuant to C.R.S. Section 29-20-105, the State Commission and individual local governments can enter into agreements defining their regulatory relationship and sharing their regulatory powers. Further, Draft Rule 521 should be modified to expressly establish that the State's land use rules serve as minimum standards for land use impacts associated with oil and gas development. Draft Rule 521 also should state that a local government may impose higher standards than set forth in the State. This method of addressing this regulatory relationship issue also comports with the provisions of C.R.S. Section 30-28-123, which specifically acknowledges and requires that a county's stricter or higher land use regulations control over those required in or under any other statute.

By addressing the issue in this manner, the COGCC preserves its ability to apply regulations in those locales where there are less stringent local land use regulations applicable to oil and gas development. As important, this Rule would address the concern of local governments who have more stringent local regulations to be able to continue to apply those regulations.

The Parties request the Commission address these issues by adopting the following proposed alternate language to Draft Rule 521(b):

A local government may enact higher or more stringent regulations governing land use, environmental and surface aspects of oil and gas operations than those as set forth in these Rules. The memorandum of agreement shall acknowledge that any such local regulations are not preempted by any land use or surface regulations contained within these Rules.

Third, the Parties recognize and express appreciation for the provision of Draft Rule 521(e) which notes that local land use authority over oil and gas operations was not meant to be impaired or negated by Rule 521. The Parties request however that as drafted this language is insufficient. Because it is confined to Draft Rule 521, the language is too restrictive and does not address the fact that the COGCC's rules, as a whole, are not meant to alter, impair or negate local land use authority. Again, by adopting the revised alternative proposed language to Rule 201 in paragraph 5 above, the COGCC will have addressed this point. If the Commission desires to reiterate this point in Draft Rule 521 (e), then the Parties request that the Commission amend the second sentence of Draft Rule 521(e) as follows:

Nothing in this Section or in these Rules shall alter, impair, or negate the authority of local governments to regulate land use and surface aspects of ~~related to~~ oil and gas operations,

provided, such regulations do not operationally conflict with applicable statutes, rules and/or regulations.

This amendment would strengthen this non-preemption language and conform it to the implementing legislation so that it is applicable to the Rules as a whole and not just to the Draft Rule 521 MOA process.

Fourth, the Parties request that the Commission allow the foregoing provisions to address the interrelationship between the Commission's regulations and local government regulations and, accordingly, request that the Commission delete Rule 303(a)(2), Operational Conflicts. Presently, that Rule states that: "The Permit to Drill shall be binding with respect to any operationally conflicting local governmental permit or land use approval process." With adoption of the foregoing language as suggested herein and in the direct testimony of these Parties, we respectfully submit that this categorical statement is no longer necessary and would potentially be in conflict with the provisions of any duly adopted MOA that will necessarily address with more specificity the jurisdictional relationship between the State and any particular local government.

6. Two additional preemption issues deserve mention in the content of Rule 521 and Rule 201. First, the Parties note to the Commission that there is no 'same subject matter test' for preemption. The Court of Appeals rejected, and the Supreme Court did not disturb, a contention that there is a "same subject analysis . . . to determine whether there is an operational conflict. (The intervenor/appellee and cross-appellant) maintains that if a state statute or regulation concerns a particular aspect of oil and gas operations, any county regulations in that area are automatically pre-empted under operational conflicts preemption. Contrary to (that) argument, we conclude that Bowen/Edwards. . . and Town of Frederick v. North American Resources Co. (citations omitted) do not support this conclusion." Board of County Commissioners of Gunnison County v. BDS International, LLC., 159 P.3d 773 (Colo. App. 2006); (cert. denied, June 11, 2007).

Second, the Parties recognize that a local regulation may be considered preempted where there is an operational conflict between the statutes governing the COGCC and/or the regulations implemented under said statute and a local regulation. "Preemption may also arise due to operational conflict when the effectuation of the local interests would materially impede or destroy the State interests." Board of County Commissioners of Douglas County v. Bainbridge, Inc., 929 P.2d 691, 712 Colo. 1996 ("For a conflict to exist, both the State statute and the local resolution . . . must contain express or implied conditions which are inconsistent and irreconcilable within one another."). However, if the purpose and operation of the statute or rule can be "achieved" without excluding the local government regulation, then there is no irreconcilable conflict, and the authority of the local entity "is to be given effect." *Id.* Importantly, because the State does not have authority to enact land use regulations over oil and gas operations without the consent of the affected local government, there can be no operational conflict between a

state land use rule and a local land use rule. In the 2003 case of Board of County Commissioners, La Plata County v. Colorado Oil and Gas Conservation Commission, the Colorado Court of Appeals held that the COGCC's statutory grant of authority did not allow it to regulate land use issues through its rulemaking authority when such issues more properly fell within the jurisdiction of local governments and there was no clear statutory authority granted to regulate in such areas. See Board of County Commissioners/COGCC, 81 P.3d 1119 (Colo.App. 2003). This decision makes clear that there are certain areas in which the authority of the COGCC was circumscribed or limited. As noted above, since that time, nothing has changed in the COGCC's legislative grant of authority that establishes land use authority over oil and gas operations.

V. WITNESSES.

Each of the witnesses identified below may testify to the substance of this Rebuttal Statement, the experience of the Parties in regulating oil and gas operations, and the potential land use and surface impacts of oil and gas operations in the counties.

The Parties reserve the right to call responsive and rebuttal witnesses, and to call any witness identified by any party.

A. Gunnison County.

1. David Baumgarten, Gunnison County Attorney
200 East Virginia Avenue, Suite 262
Gunnison, CO 81230
Phone: (970) 641-5300; Fax: (970) 641-7696
Email: dbaumgarten@gunnisoncounty.org
(David Baumgarten may testify regarding all or any portion of this Rebuttal Statement. By his signature below, David Baumgarten affirms that this Rebuttal Statement may be offered by Gunnison County as evidence at the rulemaking.)
2. Neal Starkebaum, Gunnison County Asst. Planning Director
221 N. Wisconsin Street
Gunnison, CO 81230
Phone: (970) 641-0360; Fax: (970) 641-8585
Email: nstarkebaum@gunnisoncounty.org
(Mr. Starkebaum may testify regarding all or any portion of this Rebuttal Statement.)
3. Allen Moores, Engineering Representative
811 Rio Grande
Gunnison, CO 81230
Phone: (970) 641-0044; Fax: (970) 641-8120
Email: amoores@gunnisoncounty.org
(Mr. Moores may testify regarding impacts of oil and gas operations to public

roads, and to stormwater management.)

4. Jim Cochran, Gunnison County Sage-grouse Conservation Coordinator
200 East Virginia Avenue
Gunnison, CO 81230
Phone: (970) 641-7604; Fax: (970) 641-3061
Email: jcochran@gunnisoncounty.org
(Mr. Cochran may testify to Section XVIII (Gunnison Sage-grouse) of this Rebuttal Statement.

B. La Plata County.

1. Krista Wilson, Oil and Gas Planner
1060 E. 2nd Avenue
Durango, CO 81301
Phone: (970) 382-6263
Email: WilsonKM@co.laplata.co.us
(Ms. Wilson will testify in general as to aspects of this Rebuttal Statement and concerning areas of oil and gas production that La Plata County currently regulates, as to the interplay between the draft rules and local rules, and will comment as to specific Draft Rules where she believes that.)
2. Michael Matheson, Oil and Gas Technical Advisor
1060 E. 2nd Avenue
Durango, CO 81301
Phone: (970) 382-6263
(Mr. Matheson will testify in general as to aspects of this Rebuttal Statement and make comments with regard to technical aspects of the Draft Rules. He will use his experience as La Plata County Oil and Gas Technical Advisor and as a past Commissioner on the COGCC to comment and make suggestions on both the procedural and substantive requirements contained in the Draft Rules.)
3. Wally White, La Plata County Commissioner
1060 E. 2nd Avenue
Durango, CO 81301
Phone: (970) 382-6263
(Mr. White will testify in general as to aspects of this Rebuttal Statement and about the County's position on the Memorandum of Agreement process outlined in Draft Rule 521 and the harmonization of COGCC rules with existing La Plata County oil and gas regulations.)
4. Jeffrey P. Robbins, La Plata County Attorney
Goldman, Robbins & Nicholson, P.C.
P.O. Box 2270
Durango, CO 81302
robbins@grn-law.com
(Mr. Robbins will testify in general as to aspects of this Rebuttal Statement and concerning the legal aspects of the Memorandum of Agreement process,

the coordination and harmonization of the COGCC rules with local government regulations, and legal issues associated with ultra vires and preemption concerns.

C. San Miguel County.

1. Joan May, Chair, San Miguel County Board of Commissioners
P.O. Box 1170, 333 West Colorado Avenue, 3rd Floor,
Telluride, CO 81435,
(970) 728-3844.
Commissioner May's written direct testimony generally addresses the significance of protecting the existing high level of air and water quality in San Miguel County from possible degradation and deterioration arising from oil and gas development and facilities.
2. David Schneck, San Miguel County Environmental Health Director
P.O. Box 4130, 333 West Colorado Avenue, 3rd Floor,
Telluride, CO 81435,
(970) 728-0447.
Mr. Schneck's direct testimony generally addresses his comments and concerns with regard to the draft Rules currently under consideration.

D. Northwest Colorado Council of Governments.

1. Barbara Green
Sullivan Green Seavy, L.C.C.
Attorney for NWCCOG
2969 Baseline Rd.
Boulder, CO 80303
Phone: 303 355 4405
Email: lawgreen@earthlink.net
2. Lane Wyatt, P.E.
Co-Director
NWCCOG Water Quality and Quantity Committee
P.O. Box 2308
Silverthorne, CO 80498
Phone: (970) 468-0295 ext. 116
Email: QQLane@colorado.net
3. Shanna Koenig
Co-Director
NWCCOG Water Quality and Quantity Committee
P.O. Box 2308
Silverthorne, CO 80498
Phone: (970) 468-0295 ext. 117
Email: QQWater@colorado.net

Respectfully submitted this 5th day of June, 2008.

GUNNISON COUNTY, COLORADO

By: /s/ David Baumgarten
David Baumgarten, #6050
Gunnison County Attorney
200 East Virginia Avenue, Suite 262
Gunnison, CO 81230
(970)641-5300

LA PLATA COUNTY, COLORADO

By: /s/ Jeffrey P. Robbins
Jeffrey P. Robbins, #26649
PO Box 2270
Durango, CO 81302
(970) 259-8747

SAN MIGUEL COUNTY, COLORADO

By: /s/ Steven J. Zwick
Steven J. Zwick, #8556
San Miguel County Attorney
P.O. Box 791
333 West Colorado Avenue, 3rd Floor
Telluride, CO 81435
(970) 728-3879

**NORTHWEST COLORADO
COUNCIL OF GOVERNMENTS**

By: /s/ Barbara Green
Barbara Green, #15022
Sullivan, Green & Seavy
2969 Baseline Rd
Boulder, CO 80303
(303) 355-4405

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of June, 2008 I mailed via UPS Overnight Delivery, one original with fifteen (15) 3-hole punched copies, of the above and foregoing JOINT REBUTTAL STATEMENT REGARDING THE DRAFT RULES PUBLISHED APRIL 10, 2008 (31 COLO. REG. 4) to the following:

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

With an electronic copy sent to:
Marc.fine@state.co.us

With (2) true and correct copies sent to:
Kelly Rees
Colorado Department of Law
1525 Sherman Street, 5th Floor
Denver, Colorado 80203
And electronic copy sent to:
Kelly.rees@state.co.us

With (1) true and correct copy to:
Joshua Epel, Assistant General Counsel
DCP Midstream
370 17th Street, Suite 2500
Denver, CO 80202

/s/ Brenda Wiseman
Signature of Person Certifying Service

I further hereby certify that on this 5th day of June, 2008 I emailed or mailed a true and correct copy of the above and foregoing JOINT REBUTTAL STATEMENT REGARDING THE DRAFT RULES PUBLISHED APRIL 10, 2008 (31 COLO. REG. 4) to the following parties:

Garfield County
jjordan@garfield-county.com
City of Grand Junction
eileenL@gjcity.org
La Plata County
robbins@qrn-law.com
Las Animas County
Landowners Group
Salapich@hotmail.com
Salapich@gmail.com
Forest_Management@yahoo.com
Las Animas County
Cattlemen's Assoc.
dean.oatmman@colostate.edu
Las Animas County Farm Bureau
liv2@earthlink.net
Mesa County
lyle.dechant@mesacounty.us

American Royalty Council
rhchapman@americanroyaltycouncil.com
rsa@chieftainroyalty.com
Anadarko Petroleum Corporation
john.jacus@dgslaw.com
sherry.bursey@dgslaw.com
peter.hack@dgslaw.com
Berry Petroleum Company
doconnor@hollandhart.com
rbailey@hollandhart.com
dga@bry.com
Black Hills Exploration & Production, Inc.
cekberg@bhep.com
john.jacus@dgslaw.com
sherry.bursey@dgslaw.com
sam.niebrugge@dgslaw.com
Chevron U.S.A. Inc.
wkeefe@fulbright.com

Marathon Oil Company
mwhitmore@pattonboggs.com
msavit@pattonboggs.com
idturner@marathonoil.com
fdsearle@marathonoil.com
McElvain Oil & Gas
dsiple@mcelvain.com
saldridge@bwenergyllaw.com
NGS Investments LLC
hlboigon@hhlaw.com
jlbiever@hhlaw.com
tisha.schuller@tetrattech.com
dan.pastor@tetrattech.com
Noble Energy, Inc.
sflaherty@nobleenergyinc.com
mwozniak@bwenergyllaw.com
Oil & Gas Accountability Proj.
pzoggg@acweb.com

Club 20
rebrown@club20.org
Colorado Bowhunters Association
ijamesii@comcast.net
Colorado Mule Deer Association
mike@westernrecources.org
saoul@nwf.org
Colorado Trout Unlimited
dnickum@tu.org
Colorado Wildlife Federation
cwtfed@coloradowildlife.org
Colorado Wildlife Commission
tim.monahan@state.co.us
National Audubon Society
ggraham@audubon.org
National Wildlife Federation
saoul@nwf.org

Moffat County
icomstock@moffatcounty.net
Rio Blanco County
jmadison@co.rio-blanco.co.us
kpardon@co.rio-blanco.co.us
Saguache County
bengibb@amigo.net
San Miguel County
attorney@sanmiguelcounty.org
Trinidad & Las Animas County
Chamber of Commerce
kimpacheco@comcast.net
grmolts@yahoo.com
clyde.nash@yahoo.com
Weld County
bbarker@co.weld.co.us
Northwest Colorado Council of
Governments
qqwater@colorado.net

Las Animas County
Jim D. Montoya, Board Chairman
200 E. First St., Room 110
Trinidad, CO 81082

City of Trinidad
Mayor Joseph Reorda
135 North Animas St.
Trinidad, CO 81082

Yuma County
310 Ash, Suite A
Wray, CO 80758

Colorado Interstate Gas Company
daniel.schnee@elpaso.com
COAHB & Nat'l Assoc. of Industrial and
Office Properties
rob@hbacolorado.com
moody@naiop-colorado.org
rfeuerstein@duffordbrown.com
COGA & Fulbright & Jaworski L.L.P.
meg.collins@coga.org
kwonstolen@fulbright.com
DCP Midstream LLC
alan.gilbert@hro.com
phillip.clark@hro.com
Delta Petroleum Corp
sfarber@bhfs.com
jdunn@bhfs.com
Diamon Operating, Inc.
davep@flatironenergy.com
EnCana Oil & Gas (USA) Inc.
diane.blieszner@EnCana.com
ssullivan@wsmtlaw.com
Energen Resources Corporation
rusty.cook@energen.com
mwozniak@bwenergyllaw.com
Exxon Mobil Corp./ExxonMobil Oil
rcase@popllc.com
scampbell@popllc.com
nswartzendruber@popllc.com
Gunnison Energy Corp
dlittle@bjorklindley.com
rmathes@bjorklindley.com
Halliburton Energy Services, Inc.
Ingrid.Robinson@halliburton.com
M. Sue Sheridan Jarrett
jarrettsranch@hughes.net
K.P. Kauffman Co., Inc.
Gallot@kpk.com
Kwasylenky@kpk.com

BP America Production Company
Burlington Resources Oil & Gas Co.LP
ConocoPhillips Co.
tpdugan@dugan-law.com
Colorado Petroleum Association
tpdugan@dugan-law.com
jseman@hke-law.com

Petro-Canada (USA)
Resources, Inc.
dennis.gustafson@petro-canada.com
saldridge@bwenergyllaw.com
Petron Development Company
rock-n-roll@mindspring.com
petron@mindspring.com
Plains Exploration &
Production Co.
dlittle@bjorklindley.com
Pioneer Natural Resources
USA
Ronald.Schindler@pxd.com
Jay.Still@pxd.com
Questar Market Resources
mike.smith@questar.com
Rosewood Resources, Inc.
gary_taraba@resewd.com
mwozniak@bwenergyllaw.com
Harold B. Shaeffer
hrschaef@rof.net
Southern Ute Indian Tribe
d/b/a Willow Production
tshipps@mbsslip.com
Wright Water Engineers, Inc.
jkelly@wrightwater.com
aearies@wrightwater.com
Williams Field Services
Company, LLC
jrbecker@hollandhart.com
tmnewland@hollandhart.com
raj.basi@Williams.com
Williams Production RMT Co.
jrbecker@hollandhart.com
tmnewland@hollandhart.com
Ann.Lane@Williams.com

Antero Resources Piceance
Corp.
Bill Barrett Corporation
Blue Sky Gas Storage
OXY USA WTP LP
hlboigon@hhlaw.com
jlbiever@hhlaw.com

Rocky Mountain Farmers Union
leland.swenson@rmfu.org
Rocky Mountain Clear Air Action
rmcleanair@gmail.com
Sierra Club, Rocky Mountain Chapter
Kirby.Hughes@rmc.sierraclub.org
kirbyhughes@springswisp.com
U.S. Forest Service Rocky Mtn Region
rkarstaedt@fs.fed.us
Wells Ranch LLLP
joshwells99@aol.com
jbedingfield@wobjlaw.com

Colorado Cattlemen's Association
Colorado Corn Growers
Colorado Farm Bureau
Colorado Livestock Association
Colorado Dairy Producers
Colorado Pork Producers Council
Colorado Horse Council
Colorado Wool Growers Assoc.
kholsinger@holsingerlaw.com
lchartrand@holsingerlaw.com

Western Colorado Congress
The Wilderness Society
Center for Native Ecosystems
Western Slope Environmental
Resource Council
Colorado Environmental Coalition
Wilderness Workshop
High Country Citizens' Alliance
Environment Colorado
Colorado Mountain Club
mfreeman@earthjustice.org
jangell@earthjustice.org
mike@westernresources.org

/s/ Brenda Wiseman
Signature of Person Certifying Service