

## RESOLUTION

**RE: EXPRESSION OF OPPOSITION TO NEW SETBACK AND NOTIFICATION RULES, REVISED VERSION OF JANUARY 17, 2013, CURRENTLY UNDER CONSIDERATION BY THE COLORADO OIL AND GAS CONSERVATION COMMISSION**

**WHEREAS**, the Board of County Commissioners of Weld County, Colorado, pursuant to Colorado statute and the Weld County Home Rule Charter, is vested with the authority of administering the affairs of Weld County, Colorado, and

**WHEREAS**, the Colorado Oil and Gas Conservation Commission ("COGCC") began its consideration of the adoption of amendments to current rules and new rules governing *setbacks* for oil and gas wells and production facilities through Cause No. 1R, Docket No. 1211-RM-004 ("Proposed Amendments and New Rules"), with notification of the rulemaking proceeding and the Proposed Amendments and New Rules being published in the Colorado Register on October 25, 2012, and the first hearing on November 14, 2012, with said hearing being continued to December 10 and 11, 2012, then continued to January 7 - 9, 2013, and

**WHEREAS**, a revised draft of the Proposed Amendments and New Rules were provided to parties to the rulemaking and posted on the COGCC website at 500 p.m. on December 31, 2012 (the "12-31-12 Revisions"); however, a revision of the 12-31-12 Revisions was not made available to the parties and posted on the COGCC website until the day of the continued hearing on January 7, 2013 (the "1-7-13 Revised Revisions"), allowing the parties and all interested persons little time to review prior to testifying, and

**WHEREAS**, the consideration of the 1-7-13 Revised Revisions by the COGCC during its January 7 - 9, 2013, hearings clearly violated C.R.S. § 24-4-103(4)(a), which states:

"Any proposed rule or revised proposed rule by an agency which is to be considered at the public hearing, together with a proposed statement of basis, specific statutory authority, purpose, and the regulatory analysis required in subsection (4.5) of this section, shall be made available to any person at least five days prior to said hearing," and

**WHEREAS**, the COGCC staff is currently rewriting portions of the 1-7-13 Revised Revisions, with the stated goal of having them being completed on January 17, 2013, and with COGCC consideration of such rewrite to take place on a date and time currently unnoticed but purportedly to occur sometime during the week of January 21, 2013, and

*cc: COGCC, BOCC, CA, FI, PIO  
1-17-13*

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**WHEREAS**, the Board believes that the COGCC's writing and rewriting of the Proposed Amendments and New Rules, publishing revisions at 5:00 p.m. the night before a Federal holiday, then hearing the revised version of the revisions on the same day they are published, then directing COGCC staff to rewrite them so the newest version may be heard by the COGCC on an undisclosed date and time, has the appearance of "ex-parte backroom negotiations," thereby violating Governor Hickenlooper's Executive Order D 2012-002, attached hereto as Exhibit "A," which states:

"Colorado is committed to making its rulemaking process among the most effective and transparent in the nation. State agencies and required to comply with the State Administrative Procedure Act (C.R.S. § 24-4-101, *et seq.*) in promulgating rules and involving the public, stakeholders, and the regulated community in that process. The rules promulgated through this process are designed to implement laws and achieve a variety of goals such as protecting consumers, promoting responsible business practices, ensuring public safety, and protecting public health and environment," and

**WHEREAS**, a stakeholder group to study the issue of setbacks was formed in February, 2012 (as required by C.R.S. § 24-4-103(2)), which group met several times through October, 2012; however, input from Weld County staff was never actively solicited, and seeking participation by the Local Governmental Designees ("LGD's") of three of the highest producing counties in the state (Weld, Garfield, and Yuma Counties) was apparently not a priority to the COGCC, as shown by the lack of the names of such LGD's on the "Setback Review Stakeholder List," which is attached hereto as Exhibit "B," and

**WHEREAS**, pursuant to C.R.S. § 24-4-103(4.5), by letter dated October 30, 2012, a regulatory analysis of the Proposed Amendments and New Rules was requested by the Weld County Attorney, which was completed by the COGCC staff and posted on the COGCC website on November 9, 2012 ("Regulatory Analysis"), and

**WHEREAS**, C.R.S. § 24-4-103(4.5)(IV) requires every regulatory analysis to include "a comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction," which the Regulatory Analysis calculated for the 350-foot Exception Zone Location rule, but was never updated for the 500-foot Exception Zone Location rule that was introduced in the 12-31-12 Revisions and in the 1-7-13 Revised Revisions, and

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**WHEREAS**, the Regulatory Analysis provided no estimate of the costs of lost tax revenue to Weld County (or other counties), or the loss of employment and income caused by the increased setbacks, which is substantial, as detailed in the Expert Report, entitled, "Economic Advisors, Inc., evaluation and testimony regarding Colorado Oil and Gas Conservation Commission Statewide Setback Rulemaking (2012 to 2013) impacts to mineral royalties, employee wages, and public finance," attached hereto as Exhibit "C," as commented on by Donald D. Warden, Weld County Director of Budget and Management Analysis, in an e-mail message to Commissioner Kirkmeyer, dated January 7, 2013, attached hereto as Exhibit "D," and

**WHEREAS**, similar to the Regulatory Analysis, the Statement of Basis, Specific Statutory Authority, and Purpose ("Statement"), required by C.R.S. § 24-4-103(4)(c), was written for the 350-foot Exception Zone Location rule, but was never updated for the 500-foot Exception Zone Location rule that was introduced in the 12-31-12 Revisions and in the 1-7-13 Revised Revisions, and

**WHEREAS**, neither the Statement, nor the Regulatory Analysis, detail scientific or technological issues being addressed by the Proposed Amendments and New Rules; rather, the purpose appears to be primarily political, being an attempt to satisfy certain members of the public who have complained about new oil and gas development in counties other than Weld, and to hurry rulemaking in an attempt to circumvent possible legislation that both the COGCC and the oil and gas industry see as impacting them negatively, and

**WHEREAS**, pursuant to C.R.S. § 30-11-101(1)(k), every county has the authority:

"To coordinate, pursuant to 43 U.S.C. sec. 1712, the "National Environmental Policy Act of 1969", 42 U.S.C. sec. 4321 et seq., 40 U.S.C. sec. 3312, 16 U.S.C. sec. 530, 16 U.S.C. sec. 1604, and 40 CFR parts 1500 to 1508, with the United States secretary of the interior and the United States secretary of agriculture to develop land management plans that address hazardous fuel removal and other forest management practices, water development and conservation measures, watershed protection, the protection of air quality, public utilities protection, and private property protection on federal lands within such county's jurisdiction," and

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**WHEREAS**, similarly, the need for the COGCC to work with local governments on various matters to better coordinate their regulatory frameworks is at the heart of COGCC Rule 201, wherein it states:

“Nothing in these rules shall establish, alter, impair, or negate the authority of local and county governments to regulate land use related to oil and gas operations, so long as such local regulation is not in operational conflict with the Act or regulations promulgated thereunder.”

Such coordinating relationship is the basis of the role of the LGD in the COGCC permitting process, with a greater role for the LGD even now being contemplated by the COGCC in the Proposed Amendments and New Rules. Finally, coordination between local governments and state agencies is the cornerstone of Governor Hickenlooper’s Executive Order D 2011-005, attached as Exhibit “E,” which states:

“Local governments should have more flexibility to design solutions to problems without excessive interference or oversight, or unnecessary regulation, from state government. In addition, local governments should not be expected to implement laws and regulations without the funding necessary to do so. In order to assist local governments in effectively complying with such requirements, this Executive Order gives direction to state agencies on consulting and working with local governments before imposing new regulations or other obligations,” and

**WHEREAS**, the Board recognizes that the setbacks contemplated in the Proposed Amendments and New Rules are in conflict with Weld County’s setbacks for buildings (setbacks of 150 feet from oil and gas wells, 200 feet from tank batteries, and 350 feet from such facilities in Residential Zones), thereby necessitating coordination between Weld County and the COGCC, as Weld County’s setbacks have met the health, safety and welfare needs of the citizens of Weld County since they were instituted in 1996, and

**WHEREAS**, any greater setbacks required by the COGCC will make no sense if Weld County’s building setbacks remain the same; the Board has no intention of changing Weld County’s setbacks merely to mirror those setbacks set by the COGCC without any scientific or technological basis, which, as stated above, the Proposed Amendments and New Rules lack, and

**WHEREAS**, substantial testimony and exhibits have been submitted in Cause No. 1R, Docket No. 1211-RM-004, detailing the negative impact the Proposed Amendments and New Rules will have on local land use and planning, which is clearly within the authority of local governments, particularly with respect to agricultural uses within Weld County, and

**WHEREAS**, with respect to the effect of the Proposed Amendments and New Rules on urban development, the Regulatory Analysis, in the section entitled, "IV. Comparison of the probable costs and benefits of the proposed Setback Rules to the probable costs and benefits of inaction. B. The probable costs and benefits of inaction," states the following:

"3. Developers and residential home builders; prospective home buyers. An increase in the setback distance reduces the number of lots that can be developed within a subdivision. As a result, home prices must increase to cover the increased land cost per building unit. At the same time, increased setbacks result in suburban sprawl, as much more acreage is required to build the same number of building units. Sprawl has many potential adverse environmental impacts, including the need for more roads and other infrastructure, and encouraging more vehicle miles travelled."

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners, that for the reasons detailed above, the Board calls upon the COGCC to actively coordinate with Weld County and other local governments by *dismissing the setback portion* of Cause No. 1R, Docket No. 1211-RM-004; by convening a meaningful stakeholder process that will consider the need for a close working and coordinating relationship between local governments and the COGCC, with the goal of fully considering the entire impacts of increased setbacks to local governments and their citizens; and by conducting any future such rulemaking in a manner that complies with state statutory rulemaking requirements and provides full transparency to the process, as required by Executive Order D 2012-002.

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The above and foregoing Resolution was, on motion duly made and seconded, adopted  
by the following vote on the 16<sup>TH</sup> day of January, A.D., 2013.

BOARD OF COUNTY COMMISSIONERS  
WELD COUNTY, COLORADO

ATTEST: Monica Daniel  
Weld County Clerk to the Board

William F. Garcia  
William F. Garcia, Chair

BY: Esther G. [Signature]  
Deputy Clerk to the Board

Douglas Rademacher  
Douglas Rademacher, Pro-Tem

Sean Conway  
Sean Conway

APPROVED AS TO FORM:

[Signature]  
County Attorney

Mike Freeman  
Mike Freeman

Barbara Kirkmeyer  
Barbara Kirkmeyer

Date of signature: 1/17/13