

Statement of Basis, Specific Statutory Authority, and Purpose
Amendments to Current Rules of the Colorado Oil and Gas Conservation
Commission, 2 CCR 404-1

Cause No. IR Docket No. 200600152

Conservation Levy Rulemaking

This statement sets forth the basis, specific statutory authority, and purpose for amendments (“Conservation Levy Rulemaking”) to the Colorado Oil and Gas Conservation Commission (“Commission”) Rules of Practice and Procedure, 2 CCR 404-1 (“Rules”). The Commission promulgated the Conservation Levy Rulemaking on August 4, 2020.

In adopting amendments to the Rules, the Commission relied upon the entire administrative record for this Rulemaking proceeding, which formally began on June 30, 2020, when the Commission submitted its Notice of Rulemaking to the Colorado Secretary of State. The administrative record for this Rulemaking includes the Cost-Benefit Analysis completed on July 24, 2020 by the Commission’s Staff pursuant to § 24-4-103(2.5)(a).

Statutory Authority.

The Commission’s authority to promulgate amendments to the Rules is derived from the following sections of the Colorado Oil and Gas Conservation Act (“Act”), §§ 34-60-101–131, C.R.S.:

- Section 34-60-103, C.R.S. (Definitions);
- Section 34-60-105(1), C.R.S. (Commission has the power to make and enforce rules);
- Section 34-60-108, C.R.S. (Commission has authority to adopt rules, and procedures for adopting rules);
- Section 34-60-122, C.R.S. (Commission shall fix the conservation levy, in an amount not to exceed one and seventh tenths mill, to be assessed on the market value of all oil and gas produced, saved and sold or transported from the field in the state); and
- Section 34-60-124, C.R.S. (establishing the Oil and Gas Conservation and Environmental Response Fund).

Identification of New and Amended Rules.

Consistent with its statutory authority and its legislative mandates, and in accord with the administrative record, the Commission amended Rule 310.

Overview of Purpose and Intent.

The Colorado Oil and Gas Conservation Act, §§ 34-60-101–131, C.R.S. (“Act”), directs the Commission to set the conservation mill levy at a rate that may not exceed one and seven tenths of a mill (“Conservation Levy”). *See* § 34-60-122(1)(a), C.R.S. The Conservation Levy is assessed on the market value of oil and gas sold, and funds the Oil and Gas Conservation and Environmental Response Fund (“Fund”) established by § 34-60-124, C.R.S. Revenues received from the Conservation Levy and proceeds from the tax on the severance of oil and gas provide the majority of funding for the Commission’s operations.

Out-year projections for the Fund show expenditures will outpace revenues due to the drop in commodity prices and production during the spring of 2020 and the expectation they will remain depressed and drive operators to continue to reduce production into 2021.

The projected Fund shortfall is compounded by recent forecasts from the Legislative Council that show oil and gas severance tax revenues will be significantly lower in FY 2020–21 than previously anticipated. This expected reduction in severance tax revenue could potentially affect the Commission’s FY 2021–22 appropriation from the Severance Tax Operational Fund. An increase to the Conservation Levy could possibly help offset a reduction in this appropriation, if necessary to prevent negative impacts to the Commission’s operations.

The last time the Commission fixed the Conservation Levy was in 2018 when it increased the Conservation Levy by four-tenths of a mill. *See* Commission Order No. 1R-127. The Commission finds that it is necessary to increase the Conservation Levy to mitigate the impact of projected lower commodity prices and production.

Oil and gas production and price projections conducted by the Commission’s Staff in June 2020 indicated that an increase in the Conservation Levy to \$0.0017 per dollar value would be necessary to stabilize the Fund. Accordingly, the Commission’s Staff initially proposed increasing the Conservation Levy to 1.7 mills in the draft version of Rule 310 submitted to the Secretary of State for public notice on June 30, 2020. In July 2020, the Commission’s Staff updated their oil and gas production and price projections. Under the updated projections, the Commission’s Staff determined that an increase in the Conservation Levy to 1.5 mills would be sufficient to stabilize the Fund. Accordingly, on July 24, 2020, the Commission’s Staff proposed a revised draft Rule 310 that increased the Conservation Levy to \$0.0015 per dollar value rather than \$0.0017 per dollar value. The Commission’s Staff articulated the projections supporting an increase to the Conservation Levy to \$0.0015 per dollar value in the Cost-Benefit Analysis requested by the Colorado Oil and Gas Association pursuant to § 24-4-103(2.5)(a), C.R.S., which Analysis was also posted on July 24, 2020.

Some parties to the Conservation Levy Rulemaking initially suggested that the Commission should delay considering the proposed Conservation Levy increase to a later date, or adopt a sunset provision. However, with the Commission Staff’s proposed change to increase the Conservation Levy by 1.5 mills, all parties to the Conservation Levy Rulemaking confirmed that they support the changes that the Commission adopted to Rule 310. Additionally, the Commission determined that adopting a sunset provision was unnecessary because the Commission maintains the ability to revise the Conservation

Levy through another rulemaking at a future date. To facilitate monitoring whether additional changes to the Conservation Levy may be necessary given the fluid nature of oil and gas production and price fluctuations, the Commission voted to require its Staff to provide quarterly finance updates in the future.

Amendments and Additions to Rules.

Rule 310.

Rule 310 is amended to set the Conservation Levy up to \$0.0015 per dollar value, which will be imposed on production beginning October 1, 2020.

Effective Date.

The Commission adopted the proposed amendments, which added to and amended Rule 310, at its hearing on August 4, 2020, in Cause No. IR, Docket No. 200600152. These amendments will become effective, per Section 24-4-103, C.R.S., twenty days after publication in the Colorado Register, on September 30, 2020.