

Proposed Statement of Basis, Specific Statutory Authority, and Purpose

Amendments to Appendices to the Rules of the Colorado Oil and Gas Conservation Commission, 2 CCR 404-01

This statement sets forth the basis, specific statutory authority, and purpose for amendments to Appendices to the Rules and Regulations and Rules of Practice and Procedure (“Rules”) adopted by the Colorado Oil and Gas Conservation Commission (“COGCC”) on December 11, 2008. Appendix VI maps and lists the public water systems subject to Rule 317B. Appendix VII maps the restricted surface occupancy areas that are subject to Rules 1201, 1202, 1203, and 1205. Appendix VIII maps the sensitive wildlife habitat that is subject to Rules 1201, 1202, and 1203.

These Appendices do not impose protections themselves, but simply depict areas that the Rules impose special requirements or protections for or on. Amendments to these Appendices will refine certain of the maps adopted on December 11, 2008. The amendments do not change the substantive requirements of the Rules, only the geographic extent of their applicability.

The rulemaking hearing for consideration of amendments to Appendices VI, VII, and VIII to the Rules was held on April 28-29, 2009 (testimony and deliberations). These amendments become effective on June 1, 2009.

Statutory Authority

Amendments to these Appendices are promulgated pursuant to the authority granted to the COGCC by House Bill 07-1298 and House Bill 07-1341, codified at sections 34-60-106 and 34-60-128, C.R.S., of the Oil and Gas Conservation Act (“Act”). Additional authority for the promulgation of these amendments is provided by sections 34-60-102, 34-60-103, 34-60-104, 34-60-105, and 34-60-108, C.R.S., of the Act. The Commission also adopted the following statement of basis and purpose consistent with section 34-4-103(4), C.R.S., of the Administrative Procedure Act. This statement is hereby incorporated by reference in the amendments adopted.

Basis and Purpose

The Commission has reviewed and readopted Appendices VI, VII, and VIII with revisions to: the map and list of public water systems set forth in Appendix VI; and the maps of Osprey nest sites included as part of Appendix VII. This review and these revisions will ensure the protection of public health, safety, and welfare, including the environment and wildlife resources, in the conduct of oil and gas operations in Colorado. They will also ensure that the regulatory burden placed upon the regulated community is no more than is necessary for the protection of public health, safety, and welfare, including the environment and wildlife resources.

Amendment of Appendix VI

The Commission’s adoption of amendments to its Rules on December 11, 2008 expressly included Appendix VI, which identified the Public Water Systems that would be initially subject

to Rule 317B and included an Interim Public Water System Surface Water Supply Area Map. Rule 317B states that any changes to Appendix VI would occur by Commission rulemaking, as provided in Rule 529. *See* Rule 317B.b.(2).

In the Statement of Basis, Specific Statutory Authority, and Purpose (“Statement of Basis”) adopted concurrently, the Commission stated that it anticipated making changes to Appendix VI through rulemaking to reflect further verification of public water system locations and the protection areas around them. Statement of Basis at 35. The Statement of Basis additionally stated that the Commission intended to periodically update Appendix VI through rulemaking so that future public water systems would be afforded protections available to them by Rule 317B.

Since the Commission adopted Appendix VI on December 11, 2008, the COGCC staff has completed further map work. The staff has prepared a revised list and map of these areas that differs from the current Appendix VI in four major respects:

- Certain public water systems currently identified on the Area Map were deleted after determining that those systems do not meet the definitions in the rule amendments for those systems to be protected, e.g., systems not on a classified water supply segment.
- The locations of some drinking water protection areas were shifted after correcting the coordinates for the location of public water system surface water intakes.
- Drinking water protection areas not currently on the Appendix VI map were added in those areas where little or no oil or gas production activity is occurring or is expected to occur. All of these added drinking water protection areas protect public water systems expressly included on the List of Public Water Systems in Appendix VI. No drinking water protection areas were added that are not associated with public water systems included on this List of Public Water Systems; and
- Drinking water protection areas overall were reduced in size to match the actual course of the 5-mile length of the classified water supply segment rather than a straight-line measurement from the public water system surface water intake.

The staff believes that the revised list and map accurately describe and depict the public water systems defined by the Rules.

These revisions result in a net reduction in the size of the drinking water protection areas as depicted on the Area Map, as well as a significant decrease in the number of drilling permits and active wells that fall within such areas. Because these revisions reflect the most accurate information available on this subject, the revised map was posted on the Commission website as an APD Interim Policy Map on January 12, 2009.

Amendment of Appendix VII and Readoption of Appendix VIII

The Commission’s adoption of amendments to its Rules on December 11, 2008 expressly included Appendices VII and VIII, which mapped restricted surface occupancy areas and

sensitive wildlife habitat, respectively. The definitions of restricted surface occupancy areas and sensitive wildlife habitat in the COGCC's amended rules provide that the extent of these areas would be modified through Commission rulemaking, as provided in Rule 529.

During the Commission's consideration on December 10, 2008 of a motion filed by industry parties, Acting COGCC Director David Neslin stated that the rulemaking to update Appendix VI "could also address changes to the sensitive wildlife habitat map [] or the restricted surface occupancy area maps if they're appropriate." COGCC Hearing Transcript, Dec. 10, 2008, at 116.

Since the Commission adopted Appendices VII and VIII on December 11, 2008, the COGCC staff has completed further map work. The staff has prepared revised maps for Appendix VII that reduce the Restricted Surface Occupancy area around Osprey nest sites from 1/2 mile from such sites to 1/4 mile, as set forth in the definition of this term. This revision reduces the size of this restricted surface occupancy area as depicted on the map by approximately 50%. It is reflected in the "Osprey Nest Site" map as well as in the "All Activities" map contained in Appendix VII.

Changes have not been proposed for the other maps comprising Appendix VII or those comprising Appendix VIII. The Division of Wildlife has further reviewed the other maps set forth in Appendices VII and Appendix VIII and believes that they accurately represent the habitats and areas defined in the Rules. The maps are based on the best available species range information from the Division of Wildlife and other professional wildlife managers and species-specific information based on management studies, past and on-going research projects, and long-term monitoring efforts.