

## APPENDIX B

### 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. 180100120 Conservation Levy Rulemaking

This statement sets forth the basis, specific statutory authority, and purpose for amendments (“Levy Rule”) to the Colorado Oil and Gas Conservation Commission (“Commission”) Rules of Practice and Procedure, 2 CCR 404-1 (“Rules”). The Commission promulgated the Levy Rule on January 29 & 30, 2018.

In adopting amendments to the Rules, the Commission relied upon the entire administrative record for this Rulemaking proceeding, which formally began on December 15, 2017, when the Commission submitted its Notice of Rulemaking to the Colorado Secretary of State.

#### **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 - 130, C.R.S.:

- 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 and procedure to adopt rules); and
- Section 34-60-122(1)(a), 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).

#### **Identification of New and Amended Rules.**

Consistent with its statutory authority and its legislative mandates, and in accord with the administrative record, the Commission added or amended the following Rule:

- Rule 310

#### **Overview of Purpose and Intent.**

The Colorado Oil and Gas Conservation Act, §§ 34-60-101 – 130, C.R.S. (“Act”), directs the Commission to set the conservation mill levy, an amount that may not exceed one and seven tenths mill, (“Conservation Levy”). *See* § 34-60-122(1)(a). The Conservation

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Levy is assessed on the market value of all oil and gas at the well. Revenue from the Conservation Levy funds the Oil and Gas Conservation and Environmental Response Fund (“OGCERF”), established by § 34-60-124, C.R.S. The 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 COGCC’s operations.

Over the past three fiscal years, expenditures from the OGCERF have generally exceeded revenue by \$2-3 million per year. Out-year projections for the OGCERF show expenditures will continue to outpace revenues. Without an increase in the Conservation Levy, the OGCERF is projected to be fully depleted late in FY 2018-19.

The projected OGCERF shortfall is compounded by recent forecasts from the Colorado Department of Revenue, which show oil and gas severance tax revenues may be less in FY 2018 than previously anticipated. The projected shortfall results from low year-to-date severance tax revenue receipts as well severance tax refunds the Department of Revenue projects will be paid over the next 18 months pursuant to the Supreme Court of Colorado’s decision in *BP Am. Prod. Co. v. Colorado Dep’t of Revenue*, 369 P.3d 281 (Colo. 2016). Without an increase in the Conservation Levy, the COGCC’s operations may be negatively impacted as a result of lower severance tax revenues.

The last time that Commission fixed the Conservation Levy was in 2007, when it increased the Levy from five-tenths mill to the current seventh-tenths mill. See Commission Order No. 1R-104. The Commission finds that it is necessary to increase the Conservation Levy to so as to mitigate the impact of projected lower severance tax revenues.

### **Amendments and Additions to Rules.**

#### ***Rule 310.***

Rule 310 is amended to set the Conservation Levy to be at least \$0.0011 per dollar value.

#### **Effective Date.**

The Commission adopted the proposed amendments, which added to and amended Rule 310, at its hearing on January 29-30, 2018, 2018, in Cause No. IR, Docket No. 180100120. These amendments will become effective, per Section 24-4-103, C.R.S., twenty days after publication in the Colorado Register.