

## APPENDIX B

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

#### **Cause No. 1R Docket No. 190600531 500 Series Rulemaking**

This statement sets forth the basis, specific statutory authority, and purpose for amendments (“500 Series Rules”) to the Colorado Oil and Gas Conservation Commission (“Commission”) Rules of Practice and Procedure, 2 CCR 404-1 (“Rules”). The Commission promulgated the 500 Series Rules on June 17, 2019.

In adopting amendments to the Rules, the Commission will rely upon the entire administrative record for this Rulemaking proceeding, which formally began on May 15, 2019, when the Commission submitted its Notice of Rulemaking to the Colorado Secretary of State.

#### **Background**

On April 16, 2019, Governor Polis signed Senate Bill 19-181 into law. Senate Bill 19-181 ensures that oil and gas development and operations in Colorado are regulated in a manner that protects public health, safety, welfare, the environment, and wildlife resources. Senate Bill 19-181’s amendments to the Oil and Gas Conservation Act (“Act”), §§ 34-60-101 - 131, C.R.S., are effective as of April 16, 2019, the date the Governor signed the bill into law. Senate Bill 19-181 amends, among other provisions of the Act, §§ 34-60-106(6), 34-60-108(9), 34-60-116(6)(I), and 34-60-116(1)(b), C.R.S. These specific statutory amendments provide that the Commission may appoint administrative law judges to conduct hearings and revise the evidentiary requirements for pooling and drilling and spacing unit applications. The 500 Series Rulemaking incorporates these statutory amendments into the Rules.

#### **Stakeholder and Public Participation**

On May 7, 2019, the Commission issued a draft of the proposed revisions to the 500 Series Rules. The Commission solicited stakeholders to review the proposed draft and participate in a stakeholder meeting on May 15, 2019.

#### **Statutory Authority**

The Commission’s authority to promulgate amendments to the Rules is derived from the following sections of the Act:

- Section 34-60-105(1), C.R.S. (Commission has the power to make and enforce rules necessary to enforce the Act);

## APPENDIX B

- Section 34-60-106(2.5)(a), C.R.S. (Commission will regulate oil and gas operations in a reasonable manner to protect and minimize adverse impacts to public health, safety, and welfare, the environment, and wildlife resources and protect against adverse environmental impacts on any air, water, soil, or biological resource resulting from oil and gas operations);
- Section 34-60-106(6), C.R.S. (Commission has authority to appoint administrative law judges or hearing officers in accordance with Section 34-60-108(9), and the authority to conduct hearings or to make any determinations empowered to under the Act); and
- Section 34-60-116(7), C.R.S. (Commission has authority to enter pooling orders, including orders governing nonconsenting owners).

### 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 Rules:

- 100 Series Rules: definition of Commission.
- 500 Series Rules: 503, 506, 509, 510, 511, 522, 523, 530, 531, 532 and 533.
- The Commission also adopted conforming or clarifying changes to the 500 Series Rules: 501, 502, 504, 505, 507, 508, 515, 516, 517, 518, 519, 521, 524, 525, 526, 527, 528, and 529.
- The Commission also adopted conforming or clarifying changes to Rule 207.b.(1), the 300 Series Rules: 303.h., 304, 317.a.(1), 318A.e.(5)C. and 325.b..

### Overview of Purpose and Intent

Additionally, the Commission identified clean-up revisions to other 500 Series Rules that are designed to implement the provisions of Senate Bill 19-181. The clean-up revisions also make the Commission Rules easier to understand.

### Amendments and Additions to Rules

#### *100 Series Rules: Amended Definition*

The Commission amended the definition of “Commission” to include administrative law judges and hearing officers.

## APPENDIX B

### ***Rule 501.***

Rule 501.b. was revised to make necessary changes to facilitate the Commission's assignment of applications to administrative law judges and hearing officers for adjudication.

### ***Rule 503.***

Rule 503.a. was revised to make necessary changes to facilitate the Commission's assignment of applications to administrative law judges and hearing officers for adjudication.

Rule 503.c. was added to provide that the Commission will assign all hearing applications to administrative law judges and hearing officers, except for those applications identified in Rule 503.b.(5) and (9) and Rule 529.

Rule 503.d. was added to provide that the Commission, Director, administrative law judge, or hearing officer may reject an application if the application is found to be without merit. Additionally, the Commission, Director, administrative law judge, or hearing officer may require additional information for an application as is necessary to allow for it to be considered.

Rule 503.e. A variation of Subpart e. formerly existed as Subpart c. to the Rule. The prior Rule provided that any material change to an application after notice had issued required the original application to be withdrawn and resubmitted, which required the new application to be noticed. Rule 503.e. was amended to provide that an applicant may amend its application at any time prior to issuing notice of the application. If there is a material change to the application after notice has issued, the Commission, administrative law judge, or hearing officer may dismiss the application. An application may be dismissed if the Commission, administrative law judge, or hearing officer finds that the amendment to the application alters the requested relief, requires notice to additional persons, or results in some other change that is material to the relief requested in the application. Upon the dismissal of an application, the applicant may refile its application.

Rule 503.g. was revised to make necessary changes to facilitate the Commission's assignment of applications to administrative law judges and hearing officers for adjudication.

Rule 503.h. was added to provide that Commission staff will evaluate all hearing applications for compliance with Commission Rules. Staff's evaluation of a hearing application may include a recommendation on whether the application should be granted. Senate Bill 19-181 requires that all drilling and spacing unit orders comply with the protection of public health, safety, welfare, the environment, and wildlife resources provision set forth in § 34-60-106(2.5). *See* § 34-60-116(3)(a). Commission staff are uniquely

## APPENDIX B

qualified to evaluate whether a drilling and spacing unit application satisfies Section 2.5(a). All staff evaluations and recommendations will be part of the hearing record and served upon all parties to the application.

Rule 503.j. A variation of Subpart j. formerly existed as Subpart g. to the Rule. Rule 503.j. clarifies that the Commission requires parties to include with all filings a certificate service that identifies the document served and the persons it was served upon.

### ***Rule 504.***

Rule 504 was revised to make necessary changes to facilitate the Commission's assignment of applications to administrative law judges and hearing officers for adjudication.

### ***Rule 505.***

Rule 505 was revised to make necessary changes to facilitate the Commission's assignment of applications to administrative law judges and hearing officers for adjudication.

### ***Rule 506.***

Rule 506.a. was revised to make necessary procedural changes to facilitate the assignment of hearing applications to administrative law judges and hearing officers for adjudication. Prior to Senate Bill 19-181, only the nine-member Commission could hear and consider hearing applications. The Commission met approximately every six weeks, which required a hearing application be submitted by a date certain to be considered at the next regularly scheduled Commission hearing. The Commission had the discretion to consider late-filed applications. Now that the Commission may assign hearing applications to administrative law judges and hearing officers for adjudication, there is no date by which an application must be submitted. Applicants may submit applications for hearing at any time. The Commission hopes that no longer having a deadline by which applications must be submitted will allow applicants sufficient time to prepare applications with few to no errors, thus reducing the number of amended applications and amended 511 testimony that the Commission has historically received.

Rule 506.b. was revised to provide that the secretary, administrative law judge, or hearing officer may grant requests for a continuance of an unprotested application.

Rule 506.d. A variation of Subpart d. formerly existed as Subpart c. to the Rule. Rule 506.d. was revised to make necessary changes to facilitate the Commission's assignment of applications to administrative law judges and hearing officers for adjudication.

### ***Rule 508.***

## APPENDIX B

Rule 508.f., h. and i. were revised to make necessary changes to allow for administrative law judges to preside over local public forums.

### ***Rule 509.***

Rule 509.a.(1)A. was added to clarify that an affected interest includes a person who had standing to file an application with the Commission.

Rule 509.a.(1)B. A variation of Subpart a.(1)B. formerly existed as Subpart a.(1)A. Rule 509.a.(1)B. was revised to make necessary changes to facilitate the Commission's assignment of applications to administrative law judges and hearing officers for adjudication.

Rule 509.a.(1)C.(ii) A variation of Subpart a.(1)C.(ii) formerly existed as Subpart a.(1)B.(ii). Rule 509.a.(1)C.(ii) was revised to make necessary changes to facilitate the Commission's assignment of applications to administrative law judges and hearing officers for adjudication.

Rule 509.a.(2) was amended to provide that protests and interventions are filed with the Commission and not the Secretary. Additionally, the Rule was amended to incorporate the concept that hearing applications no longer need to be filed by a date certain to be heard by the Commission. The Rule was also amended to provide that service of a protest or intervention is complete upon e-mailing or mailing.

Rules 509.b., d. and e. were revised to make necessary changes to allow for administrative law judges to preside over local public forums.

### ***Rule 510.***

Rule 510 was revised to make necessary changes to facilitate the Commission's assignment of applications to administrative law judges and hearing officers for adjudication. Additionally, subsection a. was amended to provide greater clarity as to the weight afforded statements made pursuant to Rule 510. From time to time, 510 statements include references to news articles, academic or scientific studies, and literature. The trier-of fact will weigh these and other 510 statements accordingly.

### ***Rule 511.***

Rule 511 was revised to make necessary changes to facilitate the Commission's assignment of applications to administrative law judges and hearing officers for adjudication. Rule 511.c.(2) and (6) were revised to incorporate Senate Bill 19-181's provision that all drilling and spacing unit orders satisfy Senate Bill 19-181's mandate that the Commission regulate oil and gas operations in a manner that protects public health, safety, welfare, the

## APPENDIX B

environment, and wildlife resources. See § 34-60-116(3)(a). Applicants must submit testimony demonstrating that a drilling and spacing unit satisfies Section 2.5(a).

### ***Rule 515.***

Rule 515 was revised to make necessary changes to facilitate the Commission's assignment of applications to administrative law judges and hearing officers for adjudication.

### ***Rule 516.***

Rule 516 was revised to make necessary changes to facilitate the Commission's assignment of applications to administrative law judges and hearing officers for adjudication.

### ***Rule 517.***

Rule 517.e. removes the provision that administrative hearings may be conducted by the Director. This provision is no longer necessary since the Commission may now assign applications for adjudication to administrative law judges and hearing officers.

### ***Rule 518.***

Rule 518 was revised to make necessary changes to facilitate the Commission's assignment of applications to administrative law judges and hearing officers for adjudication.

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### ***Rule 522.***

Rule 522 was revised to make necessary changes to facilitate the Commission's assignment of applications to administrative law judges and hearing officers for adjudication. Rule 522.e. provides that enforcement matters may be heard by an administrative law judge or hearing officer. When the parties agree to an Administrative Order by Consent ("AOC"), the administrative law judge or hearing officer may recommend to the Commission the approval of the AOC. If the administrative law judge or hearing officer recommends approval of the AOC, the AOC will become a final decision of the Commission within 20 days after service of the administrative law judge or hearing officer recommended decision. The Commission may, upon its own motion, stay the recommended AOC within those 20 days and remand the matter to the Director for further proceedings, or order the matter to hearing before the Commission.

## APPENDIX B

### ***Rule 523.***

Rule 523 was revised to make necessary changes to facilitate the Commission's assignment of applications to administrative law judges and hearing officers for adjudication.

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### ***Rule 526.***

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### ***Rule 528.***

Rule 528 was revised to make necessary changes to facilitate the Commission's assignment of applications to administrative law judges and hearing officers for adjudication.

### ***Rule 529.***

Rule 529.a. was amended to include that the Director may request the Commission initiate rulemaking.

### ***Rule 530.***

Senate Bill 19-181 requires that any statutory pooling application must provide that the applicant "owns, or has secured the consent of the owners of, more than forty-five percent of the mineral interests to be pooled." § 34-60-116(6)(b)(I), C.R.S. Further, Senate Bill 19-181 requires that the Commission may not enter a pooling order unless it has been demonstrated that the lease offer was made in "good faith." § 34-60-116(7)(d)(I), C.R.S. In amending Rule 530, the Commission was required to promulgate a rule that is consistent with the provisions of §§ 34-60-116(6)(b)(I) and (7)(d)(I), C.R.S. In carrying out the provisions of Senate Bill 19-181, the Commission requires all pooling applications to include sworn testimony that addresses these new statutory provisions.

## APPENDIX B

### ***Rule 531.***

Rule 531 A variation of Rule 531 formerly existed as Rule 520. Rule 531 provides that the Commission may consider a consent agenda upon which to hear uncontested matters. While Senate Bill 19-181 allows for administrative law judges and hearing officers to hear applications, the administrative law judges and hearing officers' recommended orders on those applications will not become a final order of the Commission until 20 days after service upon the parties. There may be instances when an uncontested application can be approved via the consent agenda in less than 20 days after service of the recommended order. Accordingly, the Commission retains the authority to approve uncontested hearing applications via a consent agenda.

### ***Rule 532.***

Rule 532 provides the process by which administrative law judges and hearing officers will issue orders that may be adopted by the Commission. Rule 532.a. addresses interim decisions. An interim decision is a decision that will not become a final decision of the Commission. Examples of interim decisions include decisions on discovery, requests for continuances, or requests to amend an application. Such interim decisions are not subject to the exceptions process at the time the decision is entered, but may be heard by the Commission if an exception to a final order is filed. Rule 532.a.(3) provides that a party may challenge any interim decision in an exception to a recommended order.

Rule 532.b. provides that administrative law judges and hearing officers will make a recommended order based upon the evidence in the record, and consistent with the Act and Commission Rules. The recommended order will be transmitted to the parties and the Commission. The recommended order will become the order of the Commission 20 days after it is served on the parties, unless a party files an exception with the Commission. The exception must be filed 20 days from the date of service of the recommended order, unless the Commission grants an extension of time to file the exception. Additionally, as set forth in Rule 532.c.(3), the Commission may on its own motion order the recommended order to be stayed.

If an exception to a recommended order is filed, the Commission's review of the law will be de novo. The Commission will conduct its review upon the same record that was before the administrative law judge or hearing officer.

Rule 533 A variation of Rule 533 formerly existed as Rule 528.g. Rule 533.c. was amended to provide that a recommended order becomes a Commission final order 20 days after it is served upon the parties.



## APPENDIX B

### **Effective Date**

The Commission will adopt proposed amendments at its hearing on June 17, 2019. These amendments will become effective, per § 24-4-103, C.R.S., twenty days after publication in the Colorado Register.

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