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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. 191100692 2019 Flowline Rulemaking

This statement sets forth the basis, specific statutory authority, and purpose for amendments (“2019 Flowline Rules”) to the Colorado Oil and Gas Conservation Commission (“Commission”) Rules of Practice and Procedure, 2 CCR 404-1 (“Rules”). In adopting amendments to the Rules, the Commission will rely upon the entire administrative record for this Rulemaking proceeding, which formally began on October 8, 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(19), C.R.S., directing:

The commission shall review and amend its flowline and inactive, temporarily abandoned, and shut-in well rules to the extent necessary to ensure that the rules protect and minimize adverse impacts to public health, safety, and welfare and the environment, including by:

- (a) Allowing public disclosure of flowline information and evaluating and determining when a deactivated flowline must be inspected before being reactivated; and
- (b) Evaluating and determining when inactive, temporarily abandoned, and shut-in wells must be inspected before being put into production or used for injection.

Stakeholder and Public Participation

On August 1, 2019, the Commission announced it would undertake the rulemaking for the 2019 Flowline Rules in November of 2019. On September 5, 2019, the Commission hosted its first stakeholder meeting for the 2019 Flowline Rules. On October 8, 2019, it issued a draft of the proposed rules with its Notice of Rulemaking and hosted a stakeholder meeting the following day, October 9, 2019, to explain the proposed rules and solicit stakeholder comments. The Commission invited stakeholders to participate formally as parties or informally by submitting oral or written comments in the Notice. In addition, the

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Commission created online portals through which anyone could submit written comments regarding the 2019 Flowline Rules.

Statutory Authority

In addition to the specific language quoted above from Section 34-60-106(19), C.R.S., 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);
- Section 34-60-106(2), C.R.S. (Commission may regulate the drilling, production, and pugging of wells and all other operations for the production of oil or gas);
- 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 34-60-107, C.R.S. (Commission has duty to regulate oil and gas operations so as to prevent waste of oil and gas); and
- 34-60-108, C.R.S. (Commission has authority to prescribe rules and procedure to adopt rules).

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 (Flowline System, Grade 1 Gas Leak, Out of Service Locks and Tags (OOSLAT), Produced Water Transfer System, and Tagout Device);
- Rules 215 and 216;
- Rules 326 and 333;
- Rule 610;
- Rules 711, 712, and 713;
- Rule 906; and
- 1100 Series Rules.

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Overview of Purpose and Intent

The Commission implemented Senate Bill 19-181's directives regarding public disclosure of flowlines and evaluating and determining when a deactivated flowline, inactive, temporarily abandoned, or inactive shut-in well must be inspected before being returned to active use. The three fundamental changes to the existing flowline and inactive well rules that implement these provisions are:

- (1) Requiring geodatabase information for all off-location flowlines and crude oil transfer lines and making that geodatabase information accessible to the public from COGCC's map; and
- (2) Enabling COGCC staff to conduct inspections when an operator takes action to return an inactive flowline, temporarily abandoned well, or shut-in well to active status by requiring notice 48 hours prior to returning the line or well to service.

In addition to these critical changes, the Commission identified areas to improve protection of public health, safety, welfare, and the environment in making some changes to the flowline and other rules.

The amendments adopted as part of the 2019 Flowline Rules build upon the Commission's work during the Flowline Rulemaking in 2018 to build a more complete database of information regarding flowlines and crude oil transfer lines – from beginning to end. The Commission will have complete geodatabase information for all off-location flowlines and crude oil transfer lines, an understanding of each line's integrity management program with regular integrity verifications, investigation into integrity failures to better protect the environment from a spill or release, and, upon abandonment, a repository of information regarding the life-cycle of the flowline or crude oil transfer line.

Amendments and Additions to Rules

Rule 1101.a.

In a new section 1101.a., the Commission adopted rules to create different statuses for flowlines and crude oil transfer lines. These statuses are consistent with the federal Pipeline and Hazardous Materials Safety Administration (PHMSA) statuses, which should create seamless regulation between the two agencies. Importantly, the rules require any flowline or crude oil transfer line to be Out of Service Locked and Tagged (also a new defined term, discussed below) unless it is in Active Status. This carries forward the requirement to ensure that upon accessing a site, anyone can discern what lines are active and available for use. The Rule contemplates three scenarios for an Active Status line: (1) transporting fluids; (2) undergoing repair or maintenance and locked out and tagged out in accordance with the requirements of the federal Occupational Safety and Health Administration; and (3) holding fluid, but not transporting it, which is shut-in. For shut-in lines, the Commission requires the operator to apply a tag out device – again, to ensure that anyone on-site knows

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precisely the status of each line on an oil and gas location. Clarifying changes were made throughout the rules to use consistent terms for these statuses.

Rule 1101.b.

The Commission moved the previous requirements in 1101.a. regarding registration of off-location flowlines into 1101.b. The most important change to this section is the requirement for operators to submit a geodatabase all off-location flowline to the Director. The Director will then make information about flowlines publicly viewable on the Commission's map. As of October 31, 2019, every off-location flowline was required to be registered with the Commission. Therefore, for off-location flowlines that an operator has already-registered, but has not submitted a geodatabase for it, the Commission established a deadline of December 1, 2020, for operators to submit the geodatabase. Because all lines must have a geodatabase, the Commission also removed the requirement to submit a layout drawing, which would be duplicative.

To make information submittals consistent for off-location flowlines regardless of the registration path, the Commission also now requires information about the off-location flowline's corrosion protection and integrity management system. For lines that an operator has already registered, the operator must submit this information with their next Flowline Report, Form 44, filed for the line.

The Commission, in this section and throughout the 1100-Series rules, changed the reporting timeline from a 30 day requirement to 90 days. The Commission expects operators to transition to quarterly reporting on flowline and crude oil transfer lines, which is a more efficient submittal process and also increases the efficiency for the Commission to review and audit operator submittals.

Last, the Commission deleted the previous version's references to the May 1, 2018 and October 31, 2019 deadlines, and related requirements. As of adoption of these rules, all actions required by the dates has passed, and therefore, the dates are now obsolete. The Commission also deleted other reference to these dates where the action deadlines have expired. In other scenarios, the Commission left the May 1, 2018 date in the rules if it continues to establish a date that – going forward – is an on-going requirement for operators.

Rule 1101.c.

In Rule 1101.c., the Commission created a new path for operators to register off-location flowlines – as a flowline system. Importantly, an operator must register every off-location flowline; though the rules create options for the registration, the Commission expects the same information regardless of the registration option. For off-location flowlines that DO NOT transport produced water, the operator may register the flowline:

- (1) individually pursuant to 1101.b.; or
- (2) as part of a flowline system pursuant to 1101.c.

For an off location flowline that transports produced water, the operator may register the flowline:

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- (1) individually pursuant to 1101.b.;
- (2) as part of a flowline system pursuant to 1101.c.; or
- (3) if the lines transport produced water generated at more than one well site or production facility, as part of a produced water transfer system pursuant to 1101.e.

The flowline system allows operators to register all or a subset of their off-location flowlines in a single submittal, i.e., a bulk upload. The bulk upload provides efficiencies for operators and the Commission's review and monitor the operator's off-location flowlines. The Commission will work with operators who have previously registered some or all off-locations lines through a different path if the operator prefers submitting information about the flowlines as a flowline system.

Rule 1101.d.

The Commission moved its domestic tap registration requirements to 1101.d. and deleted the now-obsolete date references. The Commission also established its expectation that tracer wire or other metallic devices used to locate subsurface lines must be resistant to corrosion damage. To comply with this, the Commission expects operators to use coated copper wire or other co-equal means. The Commission also added this reference in other sections of the rule requiring tracer wires or location devices.

Rule 1101.e.

The Commission's registration requirements for crude oil transfer lines and produced water transfer systems moved to Rule 1101.e. with a couple of changes, which have been discussed above, as the changes are similar to those made in other registration rule requirements. Again, the Commission established the requirement to submit a geodatabase by December 1, 2020, if an operator has previously registered a crude oil transfer line or produced water transfer system, but did not include a geodatabase of the location.

1101.f.

The Commission moved previously existing requirements for local governments to execute a confidentiality agreement before obtaining the underlying geodatabase information received by the Commission for off-location flowlines and crude oil transfer lines to a new section and included a modification. The Commission believes this provision continues to balance the need of local governments for information with safety concerns associated with publicly distributing geodatabase information. The modification clarifies that local governments can use the information for emergency planning as well as development and planning purposes. The Commission believes it should support the role of Utility Notification Center of Colorado (CO 811) as the primary source of information about subsurface facilities, including those related to oil and gas. However, the Commission included in this section a specific requirement that it will use geodatabase information to create a publicly accessible map of flowlines in Colorado. This accomplishes an important

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directive of Senate Bill 19-181. The rule leaves discretion to the Director to determine at what scale the map displays flowline and crude oil transfer line locations to the public.

Rule 1102

The Commission updated and or clarified a number of standards throughout the Rule, and other 1100-Series rules.

Rule 1102.d.

In Rule 1102.d., the Commission's amendments better protect and minimize adverse impacts to public health, safety, and welfare and the environment from flowlines as required by Section 34-60-106(19). First, in subpart (6), the Commission requires operators going forward to install caution tape one foot above newly installed pipe. This measure is designed to prevent damage to the pipe during excavation. The Commission also included language about corrosion protection for tracer wire or metallic locating devices discussed above.

Second, in subpart (7), the Commission now requires operators to minimize impacts to wildlife resources when installing flowlines. Some stakeholders raised the issue of wildlife resource impacts during the siting or installation of flowlines or crude oil transfer lines as something the Commission should address during this rulemaking. The Commission agrees that during installation operators should minimize impacts to wildlife resources and, therefore made the change to subpart (7). The Commission, however, will take up the question of siting flowlines to be part of the Mission Change Rulemaking's broader conversation regarding permitting of oil and gas locations and facilities.

Third, the Commission changed references to manufacturer's procedures and practices to manufacturer's specifications in Subpart (10). The Commission made conforming changes throughout the 1100-Series to ensure that the rules use a consistent, single term – manufacturer's specifications – when an operator may rely upon manufacturer's directives, whether in the form of guidelines, instructions, policies, procedures or specifications.

1102.e.

The Commission revised subpart (2) to be more protective of public health, safety, welfare, and the environment by ensuring that pipes buried with less than three feet of cover are intended to be exposed, and are designed and installed to withstand exposure to the elements. The Commission also included the requirement for operators to – as is reasonable and necessary under the circumstances – install barricades to protect above-ground flowline and crude oil transfer line infrastructure from vehicular impacts.

1102.f.

The Commission adjusted the top soil management requirements to eliminate redundancy – and perhaps potential conflicts – between the 1100-Series and 1000-Series regarding top soil management.

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1102.g.

The Commission updated its marking requirements to clarify that operators installing a marker that complies with the federal requirements also meets the Commission's requirements. In addition, the Commission removed confusing language about "in designated setback locations," to clarify that markers are required when flowlines or crude oil transfer lines cross public rights-of-way or utility easement crossings.

1102.h.

The Commission updated 1102.h. to require, going forward, that all third-party inspectors of crude oil transfer lines are either Professional Engineers or working under the supervision of a Professional Engineer.

1102.i. and 1102.j.

To conform with OSHA requirements, the Commission clarified its expectations while operators are performing maintenance or repairing flowlines or crude oil transfer lines. The rules now require an operator to apply lock out or tagg out devices when performing maintenance or repair in conformity with OSHA's requirements. The Commission also added a standard for repair and its expectation that unsafe equipment is repaired or removed.

1102.m.

Given the importance of manufacturer's specifications throughout the rules, the Commission believes it important for public health, safety, welfare, the environment, and wildlife reasons to have access to the manufacturer's specifications an operator uses when designing, operating, or installing flowlines or crude oil transfer lines. The change to 1102.m. establishes that it is the operator's responsibility to maintain a copy of or access to (e.g., online) manufacturer's specifications that the operator uses and ensures the specification is available for evaluation if a question arises regarding the operator's compliance with the specification.

1102.n.

Changes to the section clarify the Commission's expectations regarding compliance with the Utility Notification Center of Colorado (CO 811) requirements. The changes also acknowledge that some operators registered with the Commission may not have underground facilities – e.g., financial assurance providers and transporters – and that these operators are exempt from the section's requirements.

1102.o.

The Commission adopted increased requirements in Rule 1102.o. to implement Senate Bill 19-181's directive for the Commission to inspect inactive flowlines before the operator returns the line to active status. In sum, any off-location flowline or crude oil transfer line that has been inactive – meaning Out of Service or shut in – for more than ninety days, the operator must pressure test the line before returning it to use and must notify the

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Commission at least 48 hours before the pressure test. This notice allows the Commission staff to conduct an inspection during the pressure test and observe the operator when returning the inactive line to use.

In addition, the rule clarifies that shut-in off-location flowlines and crude oil transfer lines, which are still in Active Status, must continue with their integrity management regimes while shut-in. In contrast, Out of Service off-location flowlines and crude oil transfer lines are not subject to integrity management because those lines are locked out and tagged out, disconnected from any source of fluids, and purged of any fluids.

Rule 1104

In Rule 1104, the Commission made clarifying changes throughout regarding the status of a line, updating standards, and timing.

Rule 1104.k.

The Commission included an important regulatory step to create a uniform process for operators to, first, evaluate whether a spill or release of fluids resulted from an integrity management failure, and second, turn to Rule 906 to report and investigate the spill or release, if necessary. This ensures investigation and reporting (via an existing process) for all spills or releases, irrespective of the source.

Rule 1105.

The Commission's changes to the abandonment process focus on (1) expecting that abandoned infrastructure is removed, unless certain conditions are met; (2) establishing notice procedures to allow the Commission staff to inspect during abandonment; and (3) clarifying the reporting requirements for abandonment. Importantly, while abandonment of a flowline is underway, but risers have not been removed, operators must apply OOSLAT.

Rule 1105.c.

Given the Commission's presumption that flowlines will be removed, the Commission now requires 20-days notice if an operator believes an exception to the requirement applies. This time gives the Director the opportunity to review the documentation supporting the exception and approve, deny, request information, or apply conditions of approval, if reasonable and necessary to protect public health, safety, welfare, the environment, or wildlife from adverse impacts. An example of a condition of approval would be to flow fill the line abandoned in place.

For flowlines that will be abandoned and removed, operators must submit notice to the Director forty-eight hours, or more, before commencing abandonment. This allows the Commission to inspect and observe abandonment processes.

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Rule 1105.e.

The Commission's amendments to the abandonment process make clear that the presumption is abandonment of a flowline or crude oil transfer line means removal. However, the Commission understands there are some circumstances that warrant abandoning a flowline in place. For example, removing a flowline from an existing right-of-way in which the flowline is co-located with other active lines creates safety risks. For flowlines abandoned in place, the Commission's previously existing requirements, including cutting risers below grade, continue to apply. The Commission also requires including information about the line's most recent pressure test to ensure any environmental impacts have been identified and are cleaned up or are in the process of being cleaned up.

Rule 1105.f.

The Commission's changes to flowline abandonment notifications for off-location flowlines or crude oil transfer lines establish information required to be submitted to the Commission for abandonment – and this information will create a complete repository of the line's life cycle.

The changes also establish by rule what is occurring for on-location flowlines. Receiving the Field Operations Notice, Form 42 – Abandonment of Flowlines for an on-location flowline allows staff to verify the operator has completed abandonment of all facilities when staff evaluates the operator's submittals for well abandonment. In addition, the Form can be automatically sent to the relevant Local Government Designee. Conforming changes were made to Rule 1105.g.

Rule 326.

The Commission's changes to Rule 326 implement Senate Bill 19-181's directive for the Commission to inspect an inactive, temporarily abandoned or inactive, shut-in well before the operator returns the well to production or injection. Operators are now required to provide notice at least 48 hours prior to returning an inactive, shut-in well to production or injection or to conducting the work necessary or installing equipment necessary to return an inactive, temporarily abandoned well to production or injection. This notice allows the Commission staff to conduct an inspection and observe the operator's work when returning the well to production or injection.

Rule 610.

The Commission included language in a new rule – Rule 610 – to ensure operators reviewing the safety rules and who may consider a Grade 1 Gas Leak a safety (not E&P Waste) issue understand the responsibility to report a gas spill or release through the 900 Series. To ensure the agency captures the data, operators also must report the document number for the Form 19 associated with the Leak on the appropriate Form 44.

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Rule 906.

Consistent with previous changes discussed, the Commission updated Rule 906 to create a clear process for operators to also report Grade 1 Gas Leaks as well as any other flowline integrity failure that causes a reportable spill or release pursuant to Rule 906.b.(1). The Commission also clarified what information should be submitted as part of an Initial Spill Report and numbered previously unnumbered paragraphs for clarity. In addition, the inclusion of “gas” in the language of 906 ensures clarity that spill or release contemplates a spill or release of gas, in addition to a spill or release of liquids or produced water.

Conforming Changes

Definitions – 100 Series Rules.

The Commission created two new definitions: Flowline System and Out of Service Locks and Tags (OOSLAT). The definition of Flowline Systems allows operators to bulk upload off-location flowline information more efficiently and staff to review those uploads more effectively. The definition of OOSLAT is necessary to harmonize Commission rules with those of PHMSA and OSHA. It is critically important to keep out of service flowlines and crude oil transfer lines from being connected to active sources of fluids or pressure; however, the Commission’s existing definition of lock out and tag out devices may only be used when an operator is locking out and tagging out equipment for repairs or maintenance according to OSHA. Therefore, the Commission developed the OOSLAT definition to create a separate lock out/tag out process for out of service lines—enabling operators to comply with federal and state requirements.

In addition, the Commission clarified the definition of a produced water transfer system to conform with the 700 Series and removed unnecessary language from the definition of tagout device.

Rule 215.

The Commission updated Rule 215 to reflect changes in the technology used to determine GPS or geodatabase information. This is a critical definitional change given the importance of obtaining accurate geodatabase information for mapping of off-location flowlines and crude oil transfer lines.

Rule 216.

The Commission clarified its expectations that an operator include information about its plans to convey fluids, including liquids, gas, and produced water, in a Comprehensive Drilling Plan (CDP) submittal. This information assists the Commission in understanding

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the scope of impacts to public health, safety, welfare, the environment, and wildlife from a proposed CDP.

Rule 333.

This rule clarification makes consistent the reference to the Utility Notification Center of Colorado as updated in the 1100 Series rules.

Rules 711, 712, and 713.

When the Commission updated its rules in 2018, it included produced water transfer systems as a type of facility for which the Commission would collect financial assurance to ensure compliance with the 900 Series rules. Including it in this section led to confusion as some operators thought a single blanket bond would cover both produced water transfer systems as well as any other facility listed in Rule 711. The Commission, therefore, moved the financial assurance requirements for produced water transfer systems into Rule 712 to provide clarity that the Commission requires a separate financial assurance dedicated for an operator's produced water transfer system. The previous Rule 712 was renumbered to Rule 713.

Effective Date

The Commission will adopt proposed amendments at its hearing on November 20-21, 2019. These amendments will become effective, per § 24-4-103, C.R.S., twenty days after publication in the Colorado Register.