BEFORE THE OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO

IN THE MATTER OF CHANGES TO THE RULES AND REGULATIONS OF THE OIL & GAS CONSERVATION COMMISSION OF THE STATE OF COLORADO	)	CAUSE NO. 1R
	)	DOCKET NO. 180900646
	)	ORDER NO. 1R-129
		TYPE: RULEMAKING

REPORT OF THE COMMISSION

TO ALL INTERESTED PARTIES AND TO WHOM IT MAY CONCERN:

Pursuant to a hearing before the Oil and Gas Conservation Commission of the State of Colorado ("Commission"), on October 3, 2018, and October 30, 2018, at the Commission Wasatch Hearing Room, 1120 Lincoln Street, Denver, Colorado, the Commission promulgated amendments to its Rules of Practice and Procedure, 2 C.C.R. 404-1 ("Rules"), as described in **Appendix A**. Also attached to and incorporated into this Order is the Statement of Basis and Purpose in **Appendix B**.

The "Hearing Process Rulemaking" was initiated in order to comply with new legislation, SB18-230 which modified §34-60-116, C.R.S., and to streamline the Commission's current application process. The Commission conducted this rulemaking pursuant to §§34-60-105(1), 34-60-108 and 34-60-122(1)(a), C.R.S. The Commission adopted a new definition in the 100-Series and amended Rules 501-530 of the Commission Rules of Practice and Procedure

Following adoption by the Commission, these proposed added and amended rules will become effective on January 1, 2019, or as otherwise cited in the attached Statement of Basis and Purpose. All effective dates are more than twenty days after publication by the Secretary of State on December 10, 2018, pursuant to §24-4-103(5), C.R.S.

ENTERED THIS 7th day of November 2018, as of October 30, 2018.

OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO

Julie Spence Prine, Commission Secretary

APPENDIX A

RULES AND REGULATIONS

DEFINITIONS
(100 Series)

RECLAMATION shall mean the process of returning or restoring the surface of disturbed land as nearly as practicable to its condition prior to the commencement of oil and gas operations or to landowner specifications with an approved variance under Rule 502.b.

REFERENCE AREA shall mean an area either (1) on a portion of the site that will not be disturbed by oil and gas operations, if that is the desired final reclamation; or (2) another location that is undisturbed by oil and gas operations and proximate and similar to a proposed oil and gas location in terms of vegetative potential and management, owned by a person who agrees to allow periodic access to it by the Director and the operator for the purpose of providing baseline information for reclamation standards, and intended to reflect the desired final reclamation.

REGULATORY COMPLIANCE PROGRAM shall mean a documented program that evaluates an operator's operations on a scheduled basis to determine compliance with regulatory requirements, especially those required by the Act, or Commission rules, orders, or permits. Such a program should include written procedures, a recognized authority within the organization, and designated personnel whose purpose is monitoring and maintaining compliance with applicable regulatory requirements, and documentation of results of evaluations conducted.

RELEASE shall mean any unauthorized discharge of E&P waste to the environment over time.

RELEVANT LOCAL GOVERNMENT means a local government with land use authority over the application lands.

REMEDIATION shall mean the process of reducing the concentration of a contaminant or contaminants in water or soil to the extent necessary to ensure compliance with the concentration levels in Table 910-1 and other applicable ground water standards and classifications.

RESERVE PITS shall mean those pits used to store drilling fluids for use in drilling operations or to contain E&P waste generated during drilling operations and initial completion procedures.

RESIDENTIAL BUILDING UNIT means a building or structure designed for use as a place of residency by a person, a family, or families. The term includes manufactured, mobile, and modular homes, except to the extent that any such manufactured, mobile, or modular home is intended for temporary occupancy or for business purposes.

RESPONDENT shall mean a party against whom a proceeding is instituted, or a protestant who protests the granting of the relief sought in the application as provided in Rule 509.

RULES OF PRACTICE AND PROCEDURE

501. APPLICABILITY OF RULES OF PRACTICE AND PROCEDURE

a. **General.** These rules will be known and designated as "Rules of Practice and Procedure before the Oil and Gas Conservation Commission of the State of Colorado," and will apply to all proceedings before the Commission. These rules will be liberally construed to secure just, speedy, and inexpensive determination of all issues presented to the Commission.

b. **Prohibition of abuse.** Notwithstanding any provision of these rules, the Commission or Director will, upon its own motion or upon the motion of a party to a proceeding, act to prohibit or terminate any abuse of process by an applicant, protestant, intervenor, witness, or party offering a statement pursuant to Rule 510 in a proceeding. Such action may include, but is not limited to, summary dismissal of an application, protest, intervention or other pleading; limitation or prohibition of harassing or abusive testimony; limitation or prohibition of excessive motion filing; restricted discovery; and finding a party in contempt. Grounds for such action include, but are not limited to, the use of the Commission's procedures for reasons of obstruction and delay; misrepresentation in pleadings or testimony; or, other inappropriate or outrageous conduct that are deemed by the Commission or Director to be an abuse of process.

c. **Judicial review.** Any rule, regulation, or final order of the Commission, or any approval of an Application for Permit-to-Drill, Form 2, or Oil and Gas Location Assessment, Form 2A, by the Director for which a hearing is not requested within ten (10) days pursuant to Rule 305.e.(2), will be subject to judicial review in accordance with the provisions of the Administrative Procedure Act, §24-4-101 to -108, C.R.S. The statutory time period for filing a notice of appeal from any Commission decision will commence pursuant to 24-4-106(4) C.R.S.

502. PROCEEDINGS NOT REQUIRING THE FILING OF AN APPLICATION

a. **Commission's own motion.** The Commission may, on its own motion, initiate proceedings upon any questions relating to conservation of oil and gas or the conduct of oil and gas operations in the State of Colorado, or to the administration of the Act, by notice of hearing or by issuance of an emergency order without notice of hearing. Such emergency order will be effective upon issuance and will remain effective for a period not to exceed 14 days. Notice of an emergency order will be given as soon as possible after issuance.

b. **Variances.**

(1) Variances to any Commission rules, regulations, or orders may be granted in writing by the Director without a hearing upon written request by an operator to the Director, or by the Commission after hearing upon application. The operator or the applicant requesting the variance will make a showing that it has made a good faith effort to comply, or is unable to comply with the specific requirements contained in the rules, regulations, or orders, from which it seeks a variance, including, without limitation, securing a waiver or an exception, if any, and that the requested variance will not violate the basic intent of the Oil and Gas Conservation Act.

(2) No variance to the rules and regulations applicable to the Underground Injection Control Program will be granted by the Director without consultation with the U.S. Environmental Protection Agency, Region VIII, Waste Water Management Division Director.

(3) The Director will report any variances granted at the monthly Commission hearing following the date on which such variance was granted.

503. ALL OTHER PROCEEDINGS COMMENCED BY FILING AN APPLICATION

a. All proceedings that may require a Commission decision, other than those initiated by the Commission or a variance request submitted to the Director, may only be commenced by filing a formal application with the Commission electronically in a manner as determined by the Director. All operators' applications will include the operator's name and identification number; the type of application being submitted, all applicable formations, the location of applicable lands (including county, field name, Township / Range / Section, and nearby public crossroads) and map of the same; and the name and contact information (including email) for an operator representative designated to receive questions, protests, and interventions. The application will also set forth in reasonable detail the relief requested and the legal and factual grounds for such relief. The application will be executed by a person with authority to do so on behalf of the applicant, and the contents thereof will be verified by a party with sufficient knowledge to confirm the facts contained therein. The originally signed application will be maintained by the filing party. The electronically submitted application, and all subsequent documents submitted, will be considered a Commission official / public record.

With the exception of those from state and local government agencies, each application will be accompanied by a docket fee established by the Commission (see Appendix III), except applications seeking an order finding violation or an emergency order.

b. Applications to the Commission may be filed by the following applicants:

(1) For purposes of applications for the creation of drilling units, applications for additional wells within existing drilling units, other applications for modifications to existing drilling unit orders, or applications for exceptions to Rule 318, only those owners within the proposed drilling unit, or within the existing drilling unit to be affected by the application, may be applicants.

(2) For purposes of applications for involuntary pooling orders made pursuant to §34-60-116, C.R.S., or applications for unitization made pursuant to §34-60-118, C.R.S., only those owners within the proposed unit to be pooled or unitized may be applicants.

(3) For purposes of seeking an order finding violation, only the Director may be an applicant.

(4) For purposes of seeking a variance from the Commission, only the operator, mineral owner, surface owner or tenant of the lands which will be affected by such variance, other state agencies, any local government within whose jurisdiction the affected operation is located, or any person who may be directly and adversely affected or aggrieved if such variance is not granted, may be an applicant.

(5) For purposes of seeking a hearing pursuant to Rules 216.f.(4), 303.c.(2), or 303.j.(2), only the operator seeking approval of the Application for Permit-to-Drill, Form 2, or an Oil and Gas Location Assessment, Form 2A, may be the applicant.

(6) For purposes of seeking a hearing on approval of an Application for Permit-to-Drill, Form 2, or an Oil and Gas Location Assessment, Form 2A, under Rule 305.e.(2), only the following may be the applicant:

A. The operator;

B. The surface owner, solely to raise alleged noncompliance with Commission rules or statute, or to allege potential adverse impacts to public health, safety, and welfare, including the environment and wildlife resources, that are within the Commission's jurisdiction to remedy; and

C. The relevant local government, provided that the hearing will be conducted in similar fashion as is specified in Rules 508.j, 508.k, and 508.l with respect to a public issues hearing. It will be the burden of the local government to bring forward evidence sufficient for the

Commission to make the preliminary findings specified in Rule 508.j at the outset of such hearing

(7) For purposes of seeking a hearing on provisions related to measurement pursuant to Rule 328 or 329, only the mineral interest owner may be the applicant.

(8) For purposes of seeking a hearing for an order limiting surface density pursuant to Rule 1202.d.(5), only the operator will be the applicant.

(9) For purposes of seeking relief or a ruling from the Commission on any other matter not described in (1) through (8) above, only those who have demonstrated that they would be directly and adversely affected or aggrieved by a Commission ruling, and that any injury or threat of injury sustained would be entitled to legal protection under the Act may be an applicant.

c. An amended application will be required if the applicant makes any material change to a filed application after notice has been sent as per Rule 507 requirements. Submission of an amended application will cause the original application to be withdrawn and will be considered newly filed for protest and hearing dates, based on its new submission date. An amended application will be deemed materially changed if the amended application alters the requested relief of the original application, requires notice to additional persons, or as otherwise determined by the Secretary.

d. Applications subject to the requirements for local public forums under Rule 508.a. will be accompanied by a proposed plan (the "Proposed Plan") to address protection of public health, safety, and welfare, including the environment and wildlife resources, and a description of the current surface occupancy/use. The Proposed Plan will include the rules and regulations of the Commission as they are applied to oil and gas operations in the application lands along with any procedures or conditions the applicant will voluntarily follow to address the protection of public health, safety, and welfare, including the environment and wildlife resources.

e. Upon the filing of an application, the Secretary will set the matter for hearing and ensure that notice is given.

f. In order to continue to receive copies of the pleadings filed in a specific proceeding a party who receives notice of the application shall file with the Secretary a protest or intervention in accordance with these rules.

Subsequent to the initiation of a proceeding, all pleadings filed by any party will reference the docket number assigned to such proceeding. Each pleading will include the certificate of the party filing the pleading that the pleading has been served on all persons who have filed a protest or intervention in accordance with these rules, by mailing a copy thereof, first-class postage prepaid, to the last known mailing address of the person to be served, or by personal delivery, or by electronic mail.

504. DOCKET NUMBER OF PROCEEDINGS

Upon the acceptance of an application, the Secretary of the Commission will assign it a new docket number All subsequent pleadings will contain the same docket number and all subsequent filings must include the assigned docket number. Any documents submitted without a docket number could lead to delayed processing or rejection.

505. REQUIREMENT OF PUBLIC HEARING

Before the Commission adopts any rule or regulation, or enters any order, or amendment thereof or grants any variance pursuant to Rule 502., the Commission will hold a public hearing, scheduled in accordance with Rule 506. at such time and place as may be prescribed by the Commission. Any party will be entitled to be heard as provided in these rules and regulations. The foregoing will not apply to the issuance of an emergency order, notice of alleged violation, or cease and desist order.

506. HEARING DATE/CONTINUANCE

a. All applications will be filed no later than ninety (90) days in advance of the hearing date for which the applicant proposes the matter be docketed provided the docket has not been filled by the Secretary. The Secretary will have the discretion to accept applications less than ninety (90) days prior to the hearing date, subject to docket availability and the notice requirements of Rules 507. and 508. The Secretary shall grant the first request by an applicant for a continuance of any matter three (3) business days before the scheduled hearing, provided that a protest has not been filed. The Secretary or Hearing Officer will have the discretion to grant any motion for continuance. The Commission or Director may at any time direct the Secretary to discontinue granting continuances or dismiss an application.

b. In all rulemaking proceedings, hearings will be held in accordance with Rule 529.

c. The Commission, Director, Secretary, or Hearing Officer may for good cause cancel or continue any hearing to another date. Any continuance of a hearing will not extend the filing deadline for the filing of protests or interventions in accordance with Rule 509, or any other required deadline under these Rules, unless the application is amended, or as otherwise directed by the Commission, Director, or Hearing Officer.

d. When a Commission hearing is scheduled for multiple days the Secretary may estimate the time and date that a given matter may be heard by the Commission. The Commission may, in its discretion, change the proposed hearing docket, including the time or date of any scheduled hearing. It will be the responsibility of the participating parties and attorneys to be present when the Commission hears the matter.

507. NOTICE FOR HEARING

a. **General notice provisions.**

(1) When any proceeding has been initiated, the Commission will require a copy of the application, together with a notice of such proceeding, to be provided to all persons specified in the relevant sections of Rules 507.b. and 507.c. at least sixty (60) days in advance of the noticed Commission hearing date. Notice will be provided in accordance with the requirements of §34-60-108(4), C.R.S., and will be drafted by the Secretary. A signed, electronic copy will be provided to the applicant in sufficient time for delivery to those who require notice. Application and notice will be provided directly by the applicant, using the applicant's return address.

(2) The applicant is responsible for service and publication of required notices, including any related costs. No later than thirty (30) days before the noticed hearing date, the applicant will submit to the Secretary a certificate of service demonstrating that the applicant served a copy of the application and notice on all persons entitled to notice pursuant to these rules. The certificate of service will include a list of all persons who received a copy of the application and notice. The applicant will enjoy a rebuttable presumption that it has properly served notice on persons entitled to notice of the proceeding. Also no later than thirty (30) days before the noticed hearing date, the applicant will submit to the Secretary a notarized affidavit providing assurance that the applicant published a copy of the notice in relevant newspapers, and the date of publication for each newspaper used. The applicant is not required to submit a notarized proof of publication from the newspapers, or copies of the publications, unless a concern with publication is raised. Service of process by publication to unknown addresses will occur through five weeks of publication ending at the protest deadline, at least thirty (30) days prior to the noticed hearing date.

(3) The Secretary will give notice to any person who has filed a request to be placed on the Commission's general email notification list. Notice by publication or notice provided pursuant to the Commission's general email list does not confer interested party status on any person.

b. **Notice for specific applications.**

(1) **Applications affecting drilling units.** For purposes of applications for the creation of drilling units, applications for additional wells within existing drilling units or other applications for modifications of or exceptions to existing drilling unit orders (except for applications for well exception locations to existing orders which are addressed in subsection 5 of this rule) the application and notice will be served on the owners within the proposed drilling unit or within the existing drilling unit to be affected by the applications.

(2) **Applications for involuntary pooling.** For purposes of applications for involuntary pooling orders made pursuant to §34-60-116, C.R.S., the application and notice will be served on those persons who own any interest in the mineral estate, whether leased or unleased, of the tracts to be pooled, except owners of an overriding royalty interest.

(3) **Applications for unitization.** For purposes of applications for unitization made pursuant to §34-60-118, C.R.S., the application and notice will be served on those persons who own any interest in the mineral estate underlying the tract or tracts to be unitized and the owners within one-half (1/2) mile of the tract or tracts to be unitized.

(4) **Applications changing certain well location setbacks.** For purposes of applications that change the permitted minimum setbacks for established drilling and spacing units, the application and notice will be served on those owners of contiguous or cornering tracts who may be affected by such change.

(5) **Applications for well location exception.** For purposes of applications made for exceptions to Rule 318, exceptions to legal locations within drilling and spacing units, or for an exception location to an existing order, the application and notice will be served on the owners of any contiguous or cornering tract toward which the well location is proposed to be moved, provided that when the applicant owns any interest covering such tract, the person who owns the mineral estate underlying the tract covered by such lease will also be notified. If there is more than one owner within a single drilling unit and the owners have designated a party as the operator on their behalf, notice will be presumed sufficient if served upon the designated operator of the affected formation.

(6) **All other applications.** For any application not specified above, the Secretary has discretion to determine who is entitled to receive the application and notice, based on legal interest and potential impact.

(7) **Orders related to violations.** With respect to the resolution of a Notice of Alleged Violation (NOAV) through an Administrative Order by Consent (AOC), and to applications for an Order Finding Violation (OFV), the application (if any) and notice will be provided to a relevant complainant (if any); to the violator, responsible party, or operator, as applicable; and by publication in accordance with §34-60-108(4), C.R.S.

c. **Notice to local government, Colorado Department of Public Health and Environment, and Colorado Parks and Wildlife.** For purposes of intervention pursuant to Rule 509, application and notice will also be given to the relevant local governmental designee, the Colorado Department of Public Health and Environment, and the Colorado Division of Parks and Wildlife for applications made under subsections b.(1) and (3) of this rule, at the same time that notice is provided under this rule.

d. **Notice to the Colorado State Board of Land Commissioners.** Application and notice will also be given to the Colorado State Board of Land Commissioners for all applications where the Colorado State Board of Land Commissioners maintains a mineral ownership included in the application lands. This requirement does not apply to enforcement applications.

508. LOCAL PUBLIC FORUMS, HEARINGS ON APPLICATIONS FOR INCREASED WELL DENSITY AND PUBLIC ISSUES HEARINGS.

a. **Applicability of rule.** The provisions of this Rule 508 only apply to applications that would result in more than one (1) well site or multi-well site per forty (40) acre nominal governmental quarter-quarter section or that request approval for additional wells that would result in more than one (1) well site or multi-well site per forty (40) acre nominal governmental quarter-quarter section, within existing drilling units, not previously authorized by Commission order (together, for purposes of this rule, an "application for increased well density" or "application").

b. **Local public forum.**

(1) The rules and regulations of the Commission as they are applied to oil and gas operations are expected to adequately address impacts to public health, safety and welfare, including the environment and wildlife resources, which may be raised by an application for increased well density.

(2) A local public forum may, however, be convened to consider potential issues related to public health, safety, and welfare, including the environment and wildlife resources, that may be raised by an application for increased well density that may not be completely addressed by these rules or the Proposed Plan submitted pursuant to Rule 503.c.

A. A local public forum will be convened on the Commission's own motion, or upon request from the local governmental designee or the applicant.

B. A local public forum may be convened at the Director's discretion, or upon receipt of a request for a local public forum from a citizen of the county(ies) in which the application area is situated, after the Director's consideration of the following factors:

(i) The size of the application area and the number and density of surface location requested;

(ii) The population density of the application area;

(iii) The distribution of Indian, federal and fee lands within the application area;

(iv) The level of current or past public interest in increased well density in the vicinity of the application area;

(v) Whether the application is limited to the deepening or recompletion of existing wells, or directional drilling from existing surface locations; or

(vi) Whether the application is limited to an exploratory unit formed for involuntary pooling purposes.

(3) The Director will notify the local governmental designee, the Colorado Department of Public Health and Environment, and the Colorado Parks and Wildlife of any application for increased well density no later than seven days after receipt of such application. If the local governmental designee elects to require a local public forum it will notify the Director of its decision within seven days of receipt of notice of the application.

(4) The Director will notify the applicant of any decision to convene a local public forum no later than 14 days after receipt of the application.

c. **Local public forums on federal and Indian lands.**

(1) If the surface and the minerals of the application area are comprised in their entirety of federal or Indian lands no local public forum will be convened because potential impacts to the environment or public health, safety, and welfare on such lands are subject to federal or tribal requirements. All proceedings on any application for increased well density on federal or Indian lands will be conducted to comply with the obligations contained in any intergovernmental or tribal memoranda of understanding governing the conduct of oil and gas operations on federal or Indian lands.

(2) If the application area is comprised in part of federal or Indian lands, the Director will consult with the appropriate federal or Indian authorities before scheduling any public forum on the application. Insofar as the application includes federal or Indian lands, proceedings thereon will be conducted in accordance with this rule and any obligations contained in any intergovernmental or tribal memoranda of understanding governing the conduct of oil and gas operations on federal or Indian lands.

(3) The Director will notify the appropriate federal and Indian authorities of any local public forum to be convened to evaluate an application area that includes federal or Indian lands. Federal or Indian participation in the local public forum may include, without limitation, presentation of the most recent applicable resource management plan(s) and any environmental assessment(s) or environmental impact statement(s) that cover or include all or any portion of the application area.

d. **Notice of the local public forum.**

(1) Within seven days from the date the applicant receives notice from the Director that a local public forum will be convened, the applicant will submit to the Director a list of the surface owners within the application area. In determining the identity and address of a surface owner for the purpose of giving all notices under this rule the records of the assessor for the county in which the lands are situated may be relied upon.

(2) At least 21 days before the date of the local public forum the Director will mail to the listed surface owners notice thereof.

(3) Within 14 days of receipt of an application for increased well density the Director will, by regular or electronic mail or by facsimile copy, provide to the local governmental designee(s), the Colorado Department of Public Health and Environment, and the Colorado Parks and Wildlife notice of the local public forum or notice that based on the factors in Rule 508.b.(2).B above, the Director will not conduct a local public forum

(4) At least 14 days before the date of the local public forum the Director will publish notice thereof in a newspaper of general circulation in the county or counties where the application lands are located.

(5) The notice for the local public forum will state that the forum is being conducted to consider any issues raised by the application that may affect public health, safety, and welfare, including the environment and wildlife resources that are not addressed by the rules or the Proposed Plan.

(6) Within seven days of receipt of an application for increased well density, the Director will post a description of such application on the Commission website.

e. **Timing and location of the local public forum.**

(1) As soon as practicable after publication of notice, but at least 14 days prior to the scheduled Commission hearing on the application, the Director will conduct the local public forum at a location reasonably proximate to the lands affected by the application. In the alternative, if the hearing is to be held at a location reasonably proximate to the lands affected by the application, the local public forum will be replaced by the presentation of statements in accordance with Rule 510. during the hearing on the application.

(2) The Director will immediately notify the applicant of the scheduled time and location of the local public forum.

(3) To the extent practicable, the local public forum will be scheduled to accommodate the Director or the Director's designee, the participants, and the applicant.

(4) If the application area is comprised of lands located in more than one jurisdiction the Director will coordinate the local public forum to provide for a single forum at a location reasonably proximate to the lands affected by the application.

f. **Conduct of the local public forum.**

(1) A Hearing Officer will preside over the local public forum. The Hearing Officer will provide to the participants an explanation of the purpose of the local public forum and how the Commission may use the information obtained from the local public forum. The purpose of the local public forum is to address the sufficiency of the rules or the Proposed Plan with respect to protection of public health, safety, and welfare, including the environment and wildlife resources.

(2) The conduct of the local public forum will be informal, and participants will not be required to be sworn, represented by attorneys, or subjected to cross examination.

(3) Attendance or participation at the local public forum by a Commissioner will not constitute a violation of Rule 515.

(4) The applicant will participate in the local public forum and present information related to the application.

(5) The Director will create a record of the local public forum by video-tape, audio-tape, or by court reporter. Such record will be made available to all Commissioners for review prior to the hearing on the application and may be relied upon in making a decision to convene a public issues hearing

g. **Statements.**

The local public forum will be conducted to allow elected officials, local government personnel, and citizens to express concerns not completely addressed by the rules or the Proposed Plan or make statements regarding the potential impacts from applications for increased well density that relate to public health, safety, and welfare, including the environment and wildlife resources. Issues raised in the local public forum may include the following:

(1) Impact to local infrastructure;

(2) Impact to the environment;

(3) Impact to wildlife resources;

(4) Impact to ground water resources;

(5) Potential reclamation impact; and

(6) Other impact to public health, safety, and welfare

The local public forum will be limited to matters that are within the jurisdiction of the Commission.

h. **Report to the Commission.** At the conclusion of the local public forum the Hearing Officer will prepare and submit to the Commission a report of the proceedings. A copy of the report will be made available, no later than seven days prior to the hearing on the application, to the Commissioners, the applicant, the Colorado Department of Public Health and Environment or the Colorado Parks and Wildlife if it consulted on the

application, any affected local government and the public and will be posted on the Commission website. The report on the local public forum presented to the Commission will be included in the administrative record for the application, taking into consideration the nature of the local public forum process.

i. **Conduct of the hearing on the application for increased well density.**

(1) The hearing on the application will be conducted in accordance with Rule 528.

(2) The Commission will approve or deny the application based solely on the application's technical merits in accordance with §34-60-116, C.R.S.

(3) The Hearing Officer for any local public forum will present to the Commission the report of the local public forum.

(4) At the conclusion of the hearing on the application, the Commission will consider and decide whether to convene a public issues hearing based on the local public forum or statements made under Rule 510. and any motions to intervene, and the Commission may:

A. Approve the application without condition;

B. Approve the application with conditions based on the technical testimony presented at the hearing on the application;

C. Approve the application, and with the applicant's consent, attach to the order on the application conditions the Commission determines are necessary to address issues related to public health, safety or welfare, including the environment and wildlife resources;

D. Approve the application and stay its effective date to convene a public issues hearing in accordance with Rule 508.j; or

E. Deny the application.

(5) If the Commission orders a public issues hearing it will set the public issues hearing for the next regularly scheduled Commission meeting unless the applicant requests at a prehearing conference, and the Commission agrees, to convene the public issues hearing immediately following the hearing on the application.

j. **Public issues hearing.**

Upon a request by an applicant, protestant, or intervenor, or on the Commission's own motion, a public issues hearing will be convened provided the Commission makes the following preliminary findings:

(1) That the public issues raised by the application reasonably relate to potential significant adverse impacts to public health, safety and welfare, including the environment and wildlife resources, that are within the Commission's jurisdiction to remedy;

(2) That the potential impacts were not adequately addressed by:

A. In the case of an application for increased well density, the application or by the Proposed Plan; or

B. In the case of an Application for Permit-to-Drill, by such permit; and

(3) That the potential impacts are not adequately addressed by the rules and regulations of the Commission.

k. **Conduct of the public issues hearing.**

(1) The rules and regulations of the Commission will apply to all participants in the public issues hearing.

(2) The public issues hearing will be conducted, to the extent practicable, in accordance with Rule 528.

(3) After the public issues hearing the Commission may attach conditions to its order on the application to protect public health, safety and welfare, including the environment and wildlife resources, as are warranted by the relevant testimony and that are not otherwise addressed by these rules and regulations and the Proposed Plan. In addition, the Commission may without limitation:

A. Direct the applicant to amend its Proposed Plan for Commission review and approval for all or a portion of the application area to address specific issues related to public health, safety and welfare, including the environment and wildlife resources, including any identified impacts of increased well density within all or a portion of the application area, rather than on a single well basis.

B. Include in any order a provision to allow the Director discretion to attach specific conditions to individual well permits as the Commission determines are reasonable and necessary to protect public health, safety, and welfare, including the environment and wildlife resources.

(4) Any plan or conditions imposed by Commission order that would affect federal or Indian lands will take into account conditions imposed by the federal or Indian authorities and any federal environmental analysis in order to facilitate regulatory consistency and minimize duplicative regulatory efforts.

(5) Any plan or conditions imposed will take into account cost effectiveness and technical feasibility, and will not be applied to prevent the drilling of new wells per se.

l. The Director and the Commission will use best efforts to comply with the provisions of this Rule 508., however, any deviation from this rule will not invalidate the Commission's action on the local public forum, the application for increased well density, or the public issues hearing.

509. PROTESTS/INTERVENTIONS/PARTICIPATION IN ADJUDICATORY PROCEEDINGS

a. The applicant and persons who have filed with the Commission a timely and proper protest or intervention pursuant to this rule will have the right to participate formally in any adjudicatory proceeding.

(1) Description of affected interest:

A. Those who have demonstrated that they would be directly and adversely affected or aggrieved by a Commission ruling, and that any injury or threat of injury sustained would be entitled to legal protection under the Act will be considered protestants. A protest will include information to demonstrate that the person is a protestant under these rules for the protest to be accepted by the Commission. If determined by the Hearing Officer that a person is not a protestant, any statement provided will be considered a written comment submitted pursuant to Rule 510.

B. Intervention may be granted by right or by permission.

i. Intervention by right will be granted to the relevant local government; to the Colorado Department of Public Health and Environment solely to raise environmental or public health, safety, and welfare concerns; and to the Colorado Division of Parks and Wildlife solely to raise concerns about adverse impacts to wildlife resources. .,

ii. Those who have demonstrated to the satisfaction of the Commission that an intervention would serve the public interest may be recognized as a permissive intervenor. The Commission or Hearing Officer, at their discretion, may limit the scope of the permissive intervenor's participation at the hearing.

(2) The protest or intervention will be filed with the Secretary, and served on the applicant's counsel if the applicant is represented by counsel, at least thirty (30) days prior to the noticed hearing date. If the applicant is not represented by counsel, service will be made on the applicant. Service is made by electronic means. If electronic means are unavailable, service will be by first class mail and is complete on mailing. As per Rule 506.c., any continuance of a hearing will not extend the filing deadline for the filing of protests or interventions.

(3) All protest or intervention pleadings will include:

A. The application docket number;

B. A general statement of the factual or legal basis for the protest or intervention based on the application;

C. A statement of the relief requested, which must be within the Commission's jurisdiction;

D. A description of the intended presentation including a list of proposed witnesses;

E. A time estimate to hear the protest or intervention; and

F. A certificate of service attesting that the pleading has been served on the applicant and any other party which has filed a protest or intervention in the proceeding.

b. The Secretary or the Director may require any additional information necessary pursuant to these rules to ensure the application, protest, or intervention is complete on its face.

c. All pleadings filed pursuant to this rule will be submitted electronically in a manner determined by the Director, and will be accompanied by a docket fee established by the Commission (see Appendix III). The docket fee will be refunded if an intervention is denied. In cases of extreme hardship, the docket fee may be refunded at the discretion of the Commission.

d. If the application is contested, the Commission, Director, or Hearing Officer at their discretion, may direct the parties to engage in a prehearing conference in accordance with Rule 527. A prehearing conference may result in a continuance of the hearing, or bifurcation of hearing issues as determined by the Director, or Hearing Officer.

f. **Participation at the hearing:**

(1) Adjudicatory hearings will be conducted in accordance with Rule 528. and any applicable prehearing orders of the Commission or Hearing Officer.

(2) Testimony and cross-examination by a protestant or intervenor will be limited to those issues that reasonably relate to the interests that the protestant or intervenor seeks to protect, and which may be adversely affected by an order of the Commission, as determined by the Hearing Officer.

510. STATEMENTS AT HEARING

a. Any person may make an oral statement at a hearing or submit a written statement, according to instructions available on the COGCC website, prior to or at any hearing that relates to the proceeding before the Commission. The Hearing Officer will ensure written statements are provided to the Commission, Applicant,

Protestors, and Intervenors (if a docket number is specified in the statement). The Commission, at its discretion, may limit the length of any oral statement or restrict repetitive statements. In an adjudicatory hearing, an oral statement will be excluded from the record unless:

(1) The statement is made under oath; and

(2) The parties to the hearing are allowed to cross-examine the maker of the statement.

b. The Commission, at its discretion, may accept a sworn written statement into the record of an adjudicatory hearing with due regard to the fact the statement was not subject to cross-examination.

c. The parties to the hearing will have the right to object to inclusion of any statement under this Rule 510 into the record. The Commission will note the objection for the record. If the Commission accepts the basis for excluding the 510 statement from the record the substance of the statement will not be considered by the Commission in making a decision on the matter at issue.

511. UNCONTESTED HEARING APPLICATIONS

a. If a matter is uncontested, the applicant may request, and the Director may recommend, approval without a hearing based on Hearing Officer review of the merits of the verified application and the supporting exhibits. If the Director does not recommend approval of the application without hearing, the applicant may request an administrative hearing on the application. For purposes of this rule an uncontested matter will mean any application that is not subject to a protest or an intervention objecting to the relief requested in the application and will include matters in which all interested parties have consented in writing to the granting of an application without a hearing.

b. Uncontested matters may be reviewed or heard administratively by a Hearing Officer and recommended for approval on the Commission's consent agenda. From time to time, uncontested applications recommended for approval by a Hearing Officer may be of special interest to the Commission and may be recommended by the Director for presentation to the Commission.

c. **Applications where Hearing Officer review of sworn written testimony and exhibits is appropriate.** An applicant will submit the documents described in 1 through 6 below to the Commission electronically in a manner as determined by the Director at least thirty (30) days prior to the noticed hearing date. The Hearing Officer will determine if additional information / evidence is needed, on a case-by-case basis. If sufficient information is not provided, the application may be continued to the next hearing, at the Hearing Officer's discretion.

(1) One (1) written request for approval under Rule 511 briefly describing reasons the application may be a candidate for recommendation for approval without a hearing based on review of the merits of the verified application and the supporting exhibits (rather than necessitating an administrative hearing before a Hearing Officer);

(2) Sworn written testimony of relevant witnesses verifying land, geologic, and engineering facts and accompanied by attachments or exhibits that adequately support the relief requested in the application, along with resumes/curricula vitae for each witness;

(3) A statement, signed under oath, from a person having knowledge of the stated facts, attesting to the facts stated in the written testimony and any attachments or exhibits. The sworn statement need not be notarized, but it will contain language indicating that the signatory is affirming that submitted testimony and supporting documents are true and correct to the best of the signatory's knowledge and belief and, if applicable, that they were prepared by the signatory or under the signatory's supervision;

(4) A sworn statement that is a summary of the testimony to support the relief requested in the application, including a request to take administrative notice of repetitive general, technical, or scientific evidence, where appropriate;

(5) One (1) set of exhibits which will contain relevant highlights in bullet-point format on each exhibit; and

(6) A draft proposed order, if requested by the Hearing Officer, with findings of fact and conclusions of law related to land, geology, engineering, and other appropriate subjects to support the relief requested in the application. Reference to testimony, exhibits, and previous Commission orders will be included as findings in the draft proposed order.

d. **Applications where an administrative hearing before a Hearing Officer is appropriate.** An applicant will submit the following documents to the Commission electronically in a manner as determined by the Director at least seven (7) days prior to the administrative hearing.

(1) Resumes/curricula vitae for all witnesses;

(2) A written summary of the testimony to support the relief requested in the application, including a request to take administrative notice of repetitive general, technical, or scientific evidence, where appropriate;

(3) Exhibits which will contain relevant highlights in bullet-point format on each exhibit; and

(4) A draft proposed order providing land, geology, engineering, and other appropriate findings to support the relief requested in the application. Reference to previous testimony, exhibits, and orders will be included as findings in the draft proposed order.

512. COMMISSION MEMBERS REQUIRED FOR HEARINGS AND/OR DECISIONS

Five (5) members of the Commission constitute a quorum for the transaction of business. Testimony may be taken and oath or affirmation administered by any member of the Commission, or by counsel to the Commission if the Commission Chair so delegates.

513. GEOGRAPHIC AREA PLANS

a. **Purpose.** Geographic Area Plans are intended to enable the Commission to adopt basin-specific rules that promote the purposes of the Act.

b. **Scope.** Geographic Area Plans will cover an entire oil and gas field or geologic basin, likely encompassing the activities of multiple operators, in multiple sub-basins or drainages, over a period of ten (10) years or more.

c. **Procedure.**

(1) The Commission's adoption of a Geographic Area Plan will follow Rule 529.

(2) The Commission may initiate a Geographic Area Plan for a basin by publishing notice of its intent to do so, and it may adopt a Geographic Area Plan after a public hearing, which will include submittal of information from the public and public testimony. In addition to any other publication requirements in these rules, notice will be published in a newspaper of local circulation in the area covered by the Geographic Area Plan and provided to the local governmental designee(s).

(3) In adopting a Geographic Area Plan, the Commission will consult with the Colorado Department of Public Health and Environment, Colorado Parks and Wildlife, and local governmental designee(s). The Commission will also consider any local government comprehensive plans or other local government long-range planning tools.

(4) The Geographic Area Plan may include alternative development scenarios, designate units, adopt spacing orders, implement sampling or monitoring plans, or require consolidation of facilities within the area covered by the Plan subject to the Act.

514. RESERVED

515. EX PARTE COMMUNICATIONS

a. The following provisions will be applied in any adjudicatory proceeding before the Commission or a Hearing Officer.

(1) No person will make or knowingly cause to be made to any member of the Commission or a Hearing Officer an ex parte communication concerning the merits of a proceeding for which an application has been filed.

(2) No Commissioner or Hearing Officer will make or knowingly cause to be made to any interested person an ex parte communication concerning the merits of a proceeding which has been noticed for hearing.

(3) A Commissioner or Hearing Officer who receives, or who makes, or knowingly causes to be made, a communication prohibited by this rule will place on the public record of proceeding:

A. All such written communications and any responses thereto; and

B. Memoranda stating the substance of any such oral communications and any responses thereto.

(4) Upon receipt of a communication knowingly made or knowingly caused to be made by a person in violation of this rule, the Commission or a Hearing Officer may require the person to show cause why their claim or interest in the proceeding should not be dismissed, denied, or otherwise adversely affected on account of such violation.

b. Oral or written communication with individual Commission members is permissible in a rulemaking proceeding. If such information is relied upon in final decision-making it will be made part of the record by the Commission. After the rulemaking record is closed new information that is intended for the rulemaking record will be presented to the Commission as a whole upon approval of a request to reopen the rulemaking record.

c. This rule will not limit the right to challenge a decision of the Commission or a Hearing Officer on the grounds of bias or prejudice due to any ex parte communication.

516. STANDARDS OF CONDUCT

a. The purpose of this rule is to ensure that the Commission's decisions are free from personal bias and that its decision-making processes are consistent with the concept of fundamental fairness. The provisions of this rule are in addition to the requirements for Commission members set forth in Title 24, Article 18, Section 108.5 of the Colorado Revised Statutes. This rule should be construed and applied to further the objectives of fair and impartial decision making. To achieve these standards Commissioners and Hearing Officers should:

(1) Discharge their responsibilities with high integrity.

(2) Respect and comply with the law. Their conduct, at all times, should promote public confidence in the integrity and impartiality of the Commission.

(3) Not lend the prestige of the office to advance their own private interests, or the private interests of others, nor should they convey, or permit others to convey, the impression that special influence can be brought to bear on them.

b. **Conflicts of interest.** A conflict of interest exists in circumstances where a Commissioner or Hearing Officer has a personal or financial interest that prejudices that Commissioner's or Hearing Officer's ability to participate objectively in an official act.

(1) A Commissioner or a Hearing Officer will disclose the basis for a potential conflict of interest to the Commission and others in attendance at the hearing before any discussion begins or as soon thereafter as the conflict is perceived. A conflict of interest may also be raised by other Commissioners, the applicant, any protestant or intervenor, or any member of the public.

(2) In response to an assertion of a conflict of interest, a Commissioner may withdraw or the Director may designate an alternate Hearing Officer. If the Commissioner does not agree to withdraw, the other Commissioners, after discussion and comments from any party to the proceeding, will vote on whether a conflict of interest exists. Such vote will be binding on the Commissioner disclosing the conflict.

(3) In determining whether there is a conflict of interest that warrants withdrawal the Commission members or Hearing Officer will take the following into consideration:

A. Whether the official act will have a direct economic benefit on a business or other undertaking in which the Commissioner or Hearing Officer has a direct or substantial financial interest.

B. Whether the potential conflict will result in the Commissioner or Hearing Officer not being capable of judging a particular controversy fairly on the basis of its own circumstances.

C. Whether the potential conflict will result in the Commissioner or Hearing Officer having an unalterably closed mind on matters critical to the disposition of the proceeding.

c. **Discharge of duties.** In the performance of their official duties, the Commission will apply the following standards:

(1) To be faithful to and constantly strive to improve their competence in regulatory principles, and to be unswayed by partisan interests, public clamor, or fear of criticism.

(2) To maintain order and decorum in the proceedings before them.

(3) To be patient, dignified and courteous to litigants, witnesses, lawyers and others with whom the Commission deals in an official capacity, and to require similar conduct of attorneys, staff, and others subject to their direction and control.

(4) To afford to every person who is legally interested in a proceeding, or their attorney, full right to be heard according to law.

(5) To diligently discharge their administrative responsibilities, maintain professional confidence in Commission administration, and facilitate the performance of the administrative responsibilities of other staff officials.

517. REPRESENTATION AT ADMINISTRATIVE AND COMMISSION HEARINGS

a. Natural persons may appear on their own behalf and represent themselves at hearings before the Commission, and persons allowed to make oral or written statements may do so without counsel. Pro se participants will be subject to these rules and regulations.

b. Except as provided in a. and c. of this rule, representation at hearings before the Commission will be by attorneys licensed to practice law in the State of Colorado, and provided that any attorney duly admitted to practice law in a court of record of any state or territory of the United States or in the District of Columbia, but not admitted to practice in Colorado, who appears at a hearing before the Commission may, upon motion, be admitted for the purpose of that hearing only, if that attorney has associated for purposes of that hearing with any attorney who:

(1) Is admitted to practice law in Colorado;

(2) Is a resident or maintains a law office within Colorado; and

(3) Is personally appearing with the applicant in the matter and in all proceedings connected with it.

The resident attorney will continue in the case unless other resident counsel is submitted. Any notice, pleading, or other paper may be served upon the resident attorney with the same effect as if personally served on the non-resident attorney within this state. Resident counsel will be present before the Commission unless otherwise ordered by the Commission.

c. The Commission has the discretion to allow representation by a corporate officer or director of a community organization, a closely held entity, a citizens' group duly authorized under Colorado law, or if a limited liability corporation, the member/manager in the following circumstances:

(1) Where the agency is adopting a rule of future effect;

(2) Local public forums; or

(3) When an individual is appearing on behalf of a closely held corporation as provided in §13-1-127, C.R.S.

d. Unless a non-attorney is appearing pro se or pursuant to §13-1-127, C.R.S., or the Director is participating pursuant to Rule 528.c., a non-attorney will not be permitted to examine or cross-examine witnesses, make objections or resist objections to the introduction of testimony, or make legal arguments.

e. At administrative hearings before the Director, attorneys will not be required.

518. SUBPOENAS

The Commission may, through the Secretary or a Hearing Officer, issue subpoenas requiring attendance of witnesses and the production of books, papers, and other instruments to the same extent and in the same manner and in accordance with the Colorado Rules of Civil Procedure. A party seeking a subpoena will submit the form of the subpoena to the Secretary for execution. Upon execution, the party requesting the subpoena has the responsibility to serve the subpoena in accordance with the Rules of Civil Procedure. Upon receipt of an objection to any discovery issued under this Rule, the Commission, the Secretary, or a Hearing Officer has the discretion to limit the scope of the discovery sought to matters that are within the scope of the Commission's jurisdiction under the Act, or otherwise.

519. APPLICABILITY OF COLORADO COURT RULES AND ADMINISTRATIVE NOTICE

a. The Colorado Rules of Civil Procedure apply to Commission proceedings unless they are inconsistent with Commission Rules or the Colorado Oil and Gas Conservation Act, or as the Hearing Officer may otherwise direct on the record during prehearing proceedings.

b. In general, the rules of evidence applicable before a trial court without a jury will be applicable, providing that such rules may be relaxed, where, by so doing, the ends of justice will be better served.

(1) To promote uniformity in the admission of evidence, the Commission, to the extent practical, will observe and conform to the Colorado rules of evidence applicable in civil non-jury cases in the district courts of Colorado.

(2) When necessary to ascertain facts affecting substantial rights of the parties to a proceeding, the Commission may receive and consider evidence not admissible under the rules of evidence, if the evidence possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs.

(3) Informality in any proceeding or in the manner of taking testimony will not invalidate any Commission order, decision, rule or regulation.

c. **Administrative notice.** The Commission may take administrative notice of:

(1) Constitutions and statutes of any state and of the United States;

(2) Rules, regulations, official reports, decisions, and orders of state and federal administrative agencies;

(3) Decisions and orders of federal and state courts;

(4) Reports and other documents in the files of the Commission;

(5) Matters of common knowledge and undisputed technical or scientific fact;

(6) Matters that may be judicially noticed by a Colorado district court in a civil non-jury case; and

(7) Matters within the expertise of the Commission.

520. TIME OF HEARINGS AND HEARING/CONSENT AGENDA

a. Regular hearings will be held before the Commission on such days as may be set by the Commission.

b. The Secretary will place on the consent agenda those uncontested matters recommended by a Hearing Officer for approval and those matters in which an Administrative Order by Consent (AOC) has been agreed to by the parties.

(1) All matters on the consent agenda may be presented individually or in groups. All matters within a group will be voted on together, without deliberation and without the necessity of reading the individual items. However, any Commissioner may request clarification from the Director or from the attorney or other representative of the applicant for any matter on the consent agenda.

(2) Any Commissioner may remove a matter from the consent agenda prior to voting thereon.

(3) Any matter removed from the consent agenda will be heard at the end of the remaining agenda, if practicable and agreeable to the applicant, or, if not, scheduled for hearing at the next regularly scheduled meeting of the Commission.

521. SERVICE UNDER RULES 522 AND 523

a. The Director will serve a Notice of Alleged Violation, a Notice of Hearing of an enforcement action or an Order Finding Violation on the operator or the operator's designated agent and other parties as necessary by personal delivery or by certified mail, return receipt requested, to the address the operator has on file with the Commission pursuant to Rule 302.

b. All other documents in enforcement cases will be served on all parties pursuant to Rule 503.h., or electronically (unless previously objected to by a party).

c. Notice to a Complainant pursuant to Rule 522.b.(2) may be served by confirmed electronic copy (unless previously objected to by a party) or by first class mail to the address provided. Where notice is sent electronically, notice is perfected once sent. Where notice is sent by first class mail, notice is perfected five days after mailing.

d. A Petition for Review by a Complainant pursuant to Rule 522.b. will be served on the operator or the operator's designated agent to the address on file with the Commission by: confirmed electronic mail followed by a copy sent by first class mail; personal delivery; or certified mail, return receipt requested. All other documents in a Petition for Review proceeding will be served on all parties electronically (unless previously objected to by a party). Where sent by electronic copy, service is perfected once sent.

e. In emergency situations, a Cease and Desist Order may be served by confirmed electronic or facsimile copy, followed by a copy served on the operator or the operator's designated agent by personal delivery or by certified mail, return receipt requested, to the address the operator has on file with the Commission pursuant to Rule 302. In non-emergency situations, a Cease and Desist Order may be served by certified mail as described above in this subpart.

f. Service of certified mail on an operator is perfected under this Rule at the earliest of:

(1) The date the operator receives the notice;

(2) The date shown on the return receipt, if signed on behalf of the operator; or

(3) Five days after mailing.

522. PROCEDURES FOR ALLEGED VIOLATIONS

a. Identification of Alleged Violations

If, on the Director's own initiative or based on a complaint, the Director has reasonable cause to believe that a violation of the Act, or of any Commission rule, order, or permit has occurred, the Director will require the operator to remedy the violation and may commence an enforcement action seeking penalties by issuing a Notice of Alleged Violation (NOAV). Reasonable cause requires, at least, physical evidence of the alleged violation, as verified by the Director.

b. Complainant's Rights and Responsibilities

(1) The following persons (Complainant) may make a complaint to the Director requesting that an NOAV be issued:

A. The mineral owner;

B. The surface owner or tenant of the lands upon which the alleged violation occurred;

C. Other state agencies;

D. The local government with jurisdiction over the lands upon which the alleged violation took place; or

E. Any person who is directly and adversely affected or aggrieved as a result of the alleged violation and whose interest is entitled to legal protection under the Act.

(2) The Director will investigate all complaints made pursuant to Rule 522.b.(1), to the extent the Director believes is sufficient, to determine whether reasonable cause for an alleged violation exists. The Director will notify the Complainant of the determination pursuant to Rule 521.

A. If the Director determines no violation occurred, the Director will notify the operator, and no further action will be taken.

B. If the Director determines a violation may have occurred, the Director may resolve the matter without seeking penalties pursuant to subpart 522.c.(1) or initiate an enforcement action seeking penalties pursuant to subpart 522.d.

(3) If a complaint specifically results in the issuance of an NOAV, a Complainant who has filed a written complaint on a Form 18, Complaint Report, will be given 14 days to comment on the terms of a draft proposed settlement of the NOAV, if any, pursuant to subpart 522.e.(1).

(4) A Complainant who has filed a written complaint on a Form 18, Complaint Report, may file a Petition for Review requesting the Commission to hear the Complainant's objections to:

A. The Director's decision not to issue an NOAV for an alleged violation specifically identified in the written complaint; or

B. The settlement terms of a final proposed Administrative Order by Consent (AOC) settling an alleged violation arising directly from the written complaint.

(5) Complainants must file a Petition for Review application with the Commission within 28 days of receiving the Director's decision not to issue an NOAV or a final proposed AOC. Applications filed later than 28 days following receipt will not be considered.

A. A Petition for Review will set forth in reasonable detail the legal arguments and facts the Complainant contends demonstrate that the Director's decision not to issue an NOAV or the Director's proposed settlement of the alleged violation was clearly erroneous.

B. A Petition for Review may include a request for a continuance of the hearing based on actual, compelling evidence, which has been gathered by the Complainant after the Director's contested decision, that the Director should conduct additional investigation. A Hearing Officer will determine whether a continuance is warranted.

C. A Complainant must serve its Petition for Review on the operator pursuant to Rule 521 within 7 days following filing of the Petition.

D. The operator and the Director may file and serve responses within 21 days after receipt of a Petition for Review.

E. The Petition for Review and all subsequent filings must be filed with the Secretary electronically in a manner as determined by the Director.

(6) Unless continued pursuant to Rule 522.b.(5)B., the Commission will consider a Petition for Review at the next regularly scheduled hearing not less than 35 days following filing of the Petition for Review.

A. The Petition for Review hearing will be limited to evidence and information entered into the record prior to the Director's contested decision No party to the Petition for Review hearing may present evidence or information that was not previously presented to the Director. The Commission retains discretion to continue a Petition for Review hearing to direct staff to conduct additional investigation or receive and consider additional information.

B. Discovery will not be permitted prior to the Petition for Review hearing.

C. It is the Complainant's burden to show the Director's action was clearly erroneous.

i. If the Complainant meets this burden, the Commission may remand the matter to the Director for further proceedings, set the matter for an Order Finding Violation Hearing, or order other such relief it deems just and reasonable.

ii. If the Complainant fails to meet this burden, the Commission will deny the Petition for Review. For a proceeding involving objections to a final proposed AOC, the Commission may also act on the final proposed AOC pursuant to Rules 522.e.(1)C and D.

D. Parties may make a statement at the hearing. The Commission's consideration of a Petition for Review will proceed as follows:

i. Determination if any Commissioner has a conflict;

ii. Introduction and background by Staff;

iii. Presentation by the Complainant;

iv. Presentation by any intervenor;

v. Response by the operator, if any;

vi. Response by Staff, if any;

vii. Rebuttal by the Complainant, if any; and

viii. Commission decision.

c. Resolution of Alleged Violations without Penalties

(1) When the Director has reasonable cause to believe a violation has occurred, the Director may resolve the alleged violation without seeking a penalty if all of the following apply:

A. The rule allegedly violated is not a Class 3 rule and the degree of actual or threatened impact is minor or moderate under the Commission's Penalty Schedule, Rule 523.c.(1);

B. The operator has not received a previous Warning Letter or Corrective Action Required Inspection Report regarding the same violation;

C. The Director determines the alleged violation can be corrected without undue delay; and

D. The operator timely performs all corrective actions required by the Director and takes any other actions necessary to promptly return to compliance.

(2) The Director retains discretion to seek penalties for any violation of the Act, or a Commission rule, order, or permit, even if all of the factors in subpart 522.c.(1) apply.

(3) When the Director determines it is appropriate to resolve an alleged violation pursuant to subpart 522.c.(1), the Director may issue the operator either a Warning Letter or Corrective Action Required Inspection Report that identifies the provisions of the Act, or Commission Rules, orders, or permits

allegedly violated, the facts giving rise to the alleged violation, any corrective actions required to resolve the violation, and a schedule for conducting the corrective actions.

A. If the operator timely performs required corrective actions and otherwise returns to compliance, the alleged violation will be resolved and the matter closed without further action.

B. If the operator fails to fully perform all corrective actions required by a Warning Letter or a Corrective Action Required Inspection Report, or otherwise fails to return to compliance within the timeframe specified by the Director, the Director may initiate an enforcement action seeking penalties pursuant to subpart 522.d. for any unresolved alleged violation.

d. Enforcement Actions Seeking Penalties for Alleged Violations

When the Director determines subpart 522.c.(1) does not apply or otherwise elects to seek penalties for an alleged violation, the Director will commence an enforcement action by issuing a Notice of Alleged Violation (NOAV).

(1) **Content of an NOAV.** An NOAV will identify the provisions of the Act, or Commission rules, orders, or permits allegedly violated and will contain a short and plain statement of the facts alleged to constitute each alleged violation. The NOAV may propose appropriate corrective action and an abatement schedule required by the Director to correct the alleged violation. The NOAV may propose a specific penalty amount or refer generally to Rule 523.

(2) **Answer.** An answer to an NOAV must be filed within 28 days of the operator's receipt of an NOAV, unless exception or an extension is granted by the Director. An answer will, at a minimum, discuss the allegations contained in the NOAV, responding to each; identify corrective actions taken in response to the NOAV, if any; and identify facts known to the operator at the time that are relevant to the operator's response to the alleged violations. If the operator fails to file an answer within 28 days, the Director may request the Commission to enter a default judgment.

(3) **Procedural matters.**

A. Service of an NOAV constitutes commencement of an enforcement action or other proceeding for purposes of § 34-60-115, C.R.S.

B. Issuance of an NOAV does not constitute final agency action for purposes of judicial review.

C. A monetary penalty for a violation may only be imposed by Commission order.

D. The Secretary of the Commission will docket enforcement actions for hearing by issuing a Notice and Application for Hearing pursuant to Rule 507.

e. Resolution of Enforcement Actions

(1) **Administrative Order by Consent.**

An enforcement action may be provisionally resolved by agreement between the operator and the Director except as provided in subpart 522.e.(2).

A. A proposed agreement to resolve an enforcement action will be memorialized in an Administrative Order by Consent (AOC) executed by the Director and the operator. An AOC will be noticed for review and approval by the Commission unless no penalties are recommended.

B. A Complainant who has filed a written complaint on a Form 18, Complaint Report, will be informed of the terms of a draft proposed AOC resolving alleged violations arising directly

out of their written complaint and will be given 14 days to comment on the draft settlement terms before the AOC is finalized and presented to the Commission for approval. The Director will provide a copy of the final proposed AOC to the Complainant. A Complainant who objects to the finalized settlement terms proposed for an alleged violation arising directly from their written complaint may file a Petition for Review pursuant to Rule 522.b.

C. Administrative Orders by Consent that are not subject to a pending Complainant's Petition for Review will be docketed on the Commission's consent agenda and may be approved by motion without formal hearing. An approved AOC becomes a final order of the Commission subject to judicial review.

D. If the Commission does not approve an AOC, the Commission will remand the matter to the Director for further proceedings.

(2) **Order Finding Violation.**

A. An enforcement action may not be resolved by the Director and must be heard by the Commission when:

i. The Director alleges the operator is responsible for gross negligence or knowing and willful misconduct that resulted in an egregious violation;

ii. The Director alleges the operator has engaged in a pattern of violations; or

iii. The Commission sets an OFV hearing pursuant to 522.b.(6)C.i.

B. Commencing an OFV hearing

i. The Director will commence an OFV hearing for enforcement actions governed by subpart 522.e.(2)A. by filing an Notice and Application for Mandatory OFV Hearing.

ii. Order Finding Violation hearings for enforcement actions not governed by subpart 522.e.(2)A. are commenced by service of the NOAV and Notice and Application for Hearing. The Director is not required to file a separate application for an OFV hearing. An OFV hearing will commence on the date stated in the Notice and Application for Hearing, as amended by applicable pre-hearing orders, or as amended by the Director, unless the parties have agreed to and executed an AOC not less than 7 days prior to the scheduled hearing date.

iii. The Commission may conduct an OFV hearing on its own motion, with notice pursuant to Rule 507, if it believes the Director has failed to enforce a provision of the Act, or a Commission rule, order, or permit.

C. OFV hearing procedures

i. OFV prehearing procedures are governed by Rule 527. The Director may convene a prehearing conference pursuant to Rule 527 within a reasonable time after serving a Notice and Application for Hearing.

ii. OFV hearings are *de novo* proceedings governed by Rule 528.

iii. If the Director initiates the OFV hearing, a Complainant may submit a Rule 510 statement or move to intervene by permission of the Commission pursuant to Rule 509.a.(2)C.

(3) **Rescinding an NOAV.** If, after issuance of an NOAV to an operator, the Director no longer has reasonable cause to believe a violation of the Act, or of any Commission rule, order, or permit occurred, the Director will rescind the NOAV in writing.

f. Failure to Comply with Commission Orders

An operator's failure to diligently implement corrective action pursuant to an AOC, OFV, or other Commission order constitutes an independent violation which may subject the operator to additional penalties or corrective action requirements.

g. Cease and Desist Orders

(1) The Commission or the Director may issue a cease and desist order when an operator's alleged violation of the Act, or a Commission rule, order, or permit, or failure to take required corrective action creates an emergency situation. If the cease and desist order is entered by the Director, it will be reported to the Commission not later than the next regularly scheduled Commission hearing, unless the matter is heard pursuant to the expedited procedure under §34-60-121(5)(b), C.R.S.

(2) The cease and desist order will be served pursuant to Rule 521 within seven days after it is issued.

(3) The cease and desist order will state the provisions of the Act, or Commission rules, orders, or permits alleged to have been violated, and will contain a short and plain statement of the facts alleged to constitute the violation, the time by which the acts or practices cited are required to cease, and any corrective action the Commission or the Director elects to require of the operator.

(4) Any protest by an operator of a cease and desist order will be heard by the Commission pursuant to §34-60-121(5)(b), C.R.S. An operator's protest of a cease and desist order will not stay the order pending a Commission hearing on the matter, unless the operator obtains an injunction enjoining enforcement of the cease and desist order.

(5) In the event an operator fails to comply with a cease and desist order, the Commission may request the attorney general to bring suit pursuant to §34-60-109, C.R.S.

523. PROCEDURES FOR ASSESSING PENALTIES

a. General

An operator who violates the Act, or a Commission rule, order, or permit may be subject to a penalty imposed by Commission order. Penalties will be calculated based on the Act and this Rule 523. The Commission's Enforcement Guidance and Penalty Policy also provides non-binding guidance to the Commission and interested persons evaluating a penalty for an alleged violation.

b. Days of Violation

The duration of a violation presumptively will be calculated in days as follows:

(1) A reporting or other minor violation not involving actual or threatened significant adverse impacts begins on the day that the report should have been made or other required action should have been taken, and continues until the report is filed or the required action is commenced to the Director's satisfaction.

(2) All other violations begin on the date the violation was discovered or should have been discovered through the exercise of reasonable care and continues until the appropriate corrective action is commenced to the Director's satisfaction.

With respect to violations that result in actual or threatened adverse impacts to public health, safety, and welfare, including the environment and wildlife resources, commencing appropriate corrective action includes, at a minimum:

A. Performing immediate actions necessary to assess and evaluate the actual or threatened adverse impacts; and

B. Performing all other near-term actions necessary to stop, contain, or control actual or threatened adverse impacts in order to prevent, minimize, or mitigate damage to public health, safety, and welfare, including the environment and wildlife resources. Such actions may include, without limitation, stopping or containing a spill or release of E & P Waste; establishing well control after a loss of control event; removing E & P Waste resulting from surface spills or releases; installing fencing or other security measures to limit access (including wildlife access) to affected areas; providing alternative water supplies; notifying affected landowners, local governments, and other persons or businesses; and, in cases of actual adverse impacts, mobilizing all resources necessary to fully and completely remediate the affected environment.

(3) The Commission will assess a penalty for each day the evidence shows a violation continued.

(4) The number of days of violation does not include any period necessary to allow the operator to engage in good faith negotiation with the Commission regarding an alleged violation if the operator demonstrates a prompt, effective, and prudent response to the violation.

c. Penalty Calculation

The base penalty for each violation will be calculated based on the Commission's Penalty Schedule which considers the severity of the potential consequences of a violation of a specific rule combined with an assessment of the degree of actual or threatened adverse impact to public health, safety, and welfare, including the environment and wildlife resources. The maximum daily penalty cannot exceed $15,000 per day per violation.

(1) **Penalty Schedule.** The Commission's Penalty Schedule is the following matrix that establishes a daily penalty based on the classification of the rule violation (Class 1, 2, or 3) and the degree of actual or threatened adverse impact resulting from the violation (minor, moderate, or major).

		Rule Classification		
		Class 1: Paperwork or other ministerial rules, a violation of which presents no direct risk or threat of harm to public health, safety, and welfare, including the environment and wildlife resources.	Class 2: Rules related at least indirectly to protecting public health, safety, and welfare, including the environment and wildlife resources, a violation of which presents a possibility of distinct, identifiable actual or threatened adverse impacts to those interests.	Class 3: Rules directly related to protecting public health, safety, and welfare, including the environment and wildlife resources, a violation of which presents a significant probability of actual or threatened adverse impacts to those interests.
Degree of threatened or actual impact to public health, safety, welfare, the environment, or wildlife	Major: Actual significant adverse impacts	$5,000	$10,000	$15,000
	Moderate: Threat of significant adverse impacts, or moderate actual adverse impacts	$1,500	$5,000	$10,000
	Minor: No actual adverse impact and little or no threat of adverse impacts	$200	$2,500	$5,000

(2) **Degree of actual or threatened adverse impact.** The base penalty for a violation may be increased based on the degree of actual or threatened adverse impact to public health, safety, welfare, including the environment and wildlife resources resulting from the violation. The Commission will determine the degree of actual or threatened adverse impact to public health, safety, welfare, including the environment and wildlife resources, based on the totality of circumstances in each case. The Commission will consider the following, non-exclusive, list of factors in making its determination:

A. Whether and to what degree the environment and wildlife resources were adversely affected or threatened by the violation. This factor considers the existence, size, and proximity of potentially impacted livestock, wildlife, fish, soil, water, air, and all other environmental resources.

B. Whether and to what degree Waters of the State were adversely affected or threatened by the violation.

C. Whether and to what degree drinking water was adversely affected or threatened by the violation.

D. Whether and to what degree public or private property was adversely affected or threatened by the violation.

E. The quantity and character of any E & P waste or non-E & P waste that was actually or threatened to be spilled or released.

F. Any other facts relevant to an objective assessment of the degree of adverse impact to public health, safety, or welfare, including the environment and wildlife resources.

(3) **Penalty Adjustments for Aggravating and Mitigating Factors.** The Commission may increase a penalty up to the statutory daily maximum amount if it finds any of the aggravating factors listed in subpart A, below, exist. The Commission may decrease a penalty if it finds that the violator cooperated with the Commission and other agencies with respect to the violation and that any of the mitigating factors listed in subpart B, below, exist.

A. Aggravating factors

1. The violator acted with gross negligence or knowing and willful misconduct.

2. The violation resulted in significant waste of oil and gas resources.

3. The violation had a significant negative impact on correlative rights of other parties.

4. The violator was recalcitrant or uncooperative with the Commission or other agencies in correcting or responding to the violation.

5. The violator falsified reports or records.

6. The violator benefited economically from the violation, in which case the amount of such benefit will be taken into consideration.

7. The violator has engaged in a pattern of violations.

8. The violation led to death or serious injury.

B. Mitigating factors

1. The violator self-reported the violation.

2. The violator demonstrated prompt, effective and prudent response to the violation, including assistance to any impacted parties.

3. The cause of the violation was outside of the violator's reasonable control and responsibility, or is customarily considered to be force majeure.

4. The violator made a good faith effort to comply with applicable requirements prior to the Commission learning of the violation.

5. The cost of correcting the violation reduced or eliminated any economic benefit to the violator, excluding circumstances in which increased costs stemmed from non-compliance.

6. The violator has demonstrated a history of compliance with the Act, and Commission rules, orders, and permits.

(4) **Penalty adjustments based on duration of violation.** In its discretion, the Commission may decrease the daily penalty amounts for violations of long duration to ensure the total penalty is appropriate to the nature of the violation.

d. Pattern of Violations, Gross Negligence or Knowing and Willful Misconduct

(1) The Director will apply for an Order Finding Violation hearing before the Commission when the Director determines an operator has:

A. Engaged in a pattern of violations; or

B. Acted with gross negligence or knowing and willful misconduct that resulted in an egregious violation.

(2) If the Commission finds after hearing that an operator is responsible for the conduct described in subparagraph d.(1), the Commission may suspend an operator's Certification of Clearance, withhold new drilling or oil and gas location permits, or both. Such suspension will last until such time as the violator demonstrates to the satisfaction of the Commission that the operator has brought each violation into compliance and that any penalty assessed (not subject to judicial review) has been paid at which time the Commission may vacate the order.

(3) The Commission will consider an operator's history of violations of the Act, or Commission rules, orders, or permits and any other factors relevant to objectively determining whether an operator has engaged in a pattern of violations. For an operator's history of violations, the Commission may only consider violations confirmed by Commission order through an AOC or OFV.

e. Voluntary disclosure

(1) An operator who maintains a regulatory compliance program and voluntarily discloses to the Director a violation of the Act, or any Commission rule, order, or permit discovered as a direct result of such a program will have a rebuttable presumption of a penalty reduction, of at least 35% for a disclosed violation, if:

A. The disclosure is made promptly after the operator learns of the violation as a result of its regulatory compliance program;

B. The operator cooperates with the Director regarding investigation of the disclosed violation; and

C. The operator has achieved or commits to achieve compliance within a reasonable time and pursues compliance with due diligence.

(2) This presumption will not apply if:

A. The disclosure or the regulatory compliance program was engaged in for fraudulent purposes;

B. The disclosed violation was part of a pattern of violations; or

C. The disclosed violation was egregious and the result of the operator's gross negligence or knowing and willful misconduct.

(3) If the Director determines that any of the factors in subpart (1) are not met or that the factors in subpart (2) are met, the Director may consider the fact that the operator self-reported the violation as a

mitigating factor under Rule 523.c.(3)B(1).

f. **Public Projects.** In its discretion, the Commission may allow an operator to satisfy a penalty in whole or in part by a Public Project that the operator is not otherwise legally required to undertake. The costs of the Public Project may offset the penalty amount dollar for dollar, or by some other ratio determined by the Commission. A Public Project must provide tangible benefit to public health, safety and welfare, or the environment or wildlife resources. The Commission favors Public Projects that benefit the persons or communities most directly affected by a violation, or that provide education or training to local government entities, first responders, the public, or the regulated community related to the violation.

g. **Payment of penalties.** An operator will pay a penalty imposed by Commission order, by certified funds, within 30 days of the effective date of the order, unless the Commission grants a longer period or unless the operator files for judicial appeal, in which event payment of the penalty will be stayed pending resolution of such appeal. An operator's obligations to comply with the provisions of a Commission order requiring compliance with the Act, or Commission rules, orders, or permits will not be stayed pending resolution of an appeal except by court order.

524. DETERMINATION OF RESPONSIBLE PARTY

In all cases initiated by the Commission or at the request of the Director, it will be the burden of the Director to present sufficient evidence to the Commission to determine responsible party status. In all other cases, the applicant will have the burden to present sufficient evidence to the Commission to determine responsible party status.

a. A hearing may be initiated on the Commission's own motion, upon application, or at the request of the Director to decide responsible party status upon at least 21 days' notice to the potentially responsible parties.

b. Potentially responsible parties will be those persons that have or should have submitted Registration for Oil and Gas Operation, Form 1, or that have or should have submitted financial assurance for oil and gas operations pursuant to requirements of the 700-Series Rules.

c. Potentially responsible parties will provide to the Commission or Director such information as the Commission or Director may reasonably require in making such determination.

d. The Commission will make the determination under this section without regard to any contractual assignments of liability or other legal defenses between parties.

e. An operator will enjoy a rebuttable presumption against mitigation liability under §34-60-124(7) C.R.S., for ongoing significant adverse environmental impacts where the violation which led to such impacts was committed by a predecessor operator and where the operator has conducted an environmental investigation, with reasonable due diligence, of the environmental condition of the particular asset or activity and such investigation did not reveal such significant adverse environmental impacts. The failure to report any condition which is causing such impacts, upon subsequent knowledge by the operator, will negate the rebuttable presumption against mitigation liability.

f. Where multiple persons are determined to be responsible parties, they will share in the mitigation liability in proportion to their respective shares of production, respective periods of ownership or respective contributions to the problem, or any other factors as may serve the interests of fairness.

g. The determination of responsible party status and mitigation liability will require a showing that the responsible party conducted operations that have resulted in or have threatened to cause a significant adverse environmental impact to any air, water, soil or biological resource based on the conduct of oil or gas operations in contravention of any then applicable historic provisions of the Act or rules, whether or not the Commission has entered an order finding violation.

525. PERMIT-RELATED PENALTIES

a. If the Commission determines, after a hearing, that an operator failed to perform any required corrective action/abatement or failed to comply with a cease and desist order issued by the Director or the Commission with regard to violation of a permit provision, the Commission may issue an order suspending, modifying or revoking a permit or permits authorizing the operation. The order will provide the condition(s) which must be met by the operator for reinstatement of the permit(s). An operator which is subject to an order that suspends, modifies or revokes a permit or permits will continue the affected operations only for the purpose of bringing them into compliance with the permit(s) or modified permit(s) and will do so under the supervision of the Director. Once the condition for reinstatement has been met to the satisfaction of the Director and any fine not subject to judicial review or appeal has been paid, the Director will inform the Commission, and the Commission, if in agreement, will reinstate the permit(s).

b. Whenever the Commission or the Director has evidence that an operator is responsible for a pattern of violation of any provision of the Act, or of any rule, permit or order of the Commission, the Commission or the Director will issue a notice to such operator to appear for a hearing before the Commission. If the Commission finds, after such hearing, that a knowing and willful pattern of violation exists, it may issue an order which will prohibit the issuance of any new permits to such operator. When such operator demonstrates to the satisfaction of the Commission that it has brought each of the violations into compliance and that any fine not subject to judicial review or appeal has been paid, such order denying new permits will be vacated.

526. ADMINISTRATIVE HEARINGS IN UNCONTESTED MATTERS

a. As to applications where there has been no protest or intervention filed with the Commission in accordance with Rule 509., and where the Director has not recommended approval based on the content of the verified application and supporting exhibits, the application may be heard administratively prior to or on the date of the scheduled Commission hearing. The date and time of the administrative hearing will be scheduled for the mutual convenience of the applicant and the Hearing Officer. The administrative hearing may be conducted prior to the protest or intervention date, but no order will be entered by the Commission until it has fully considered any timely and properly filed protest or intervention.

b. One or more duly appointed Hearing Officers may hear the application at the administrative hearing. Administrative hearings will proceed informally in a meeting format. The applicant may present its case using exhibits and witnesses. All witnesses will be sworn. At the conclusion of the administrative hearing, the Hearing Officer will make a decision concerning approval or denial of the application and so inform the applicant. The Hearing Officer will put such decision in a written report to the Commission containing findings of fact, conclusions of law, if any, and a recommended order. If the Hearing Officer recommends denial or qualified approval of the application, the applicant will be entitled to a hearing de novo at the next scheduled hearing of the Commission.

c. The Commission or Director may appoint Hearing Officers from the Commission staff for the purpose of hearing uncontested matters, presiding at local public forums or otherwise representing the Commission. The service of the Hearing Officers will be at the Director's discretion.

527. PREHEARING PROCEDURES FOR CONTESTED ADJUDICATORY PROCEEDINGS BEFORE THE COMMISSION

a. The Commission encourages the use of prehearing conferences between parties to a contested matter in order to facilitate settlement, narrow the issues, identify any stipulated facts, resolve any other pertinent issues, and reduce the hearing time before the Commission. A prehearing conference will be conducted at the direction of the Commission or the Director upon receipt of a protest or an intervention, or upon the request of the applicant or any person who has filed a protest or intervention. For matters in which a staff analysis has been prepared, the Director will participate in the prehearing conference to advise the parties of the content of the preliminary staff analysis. The prehearing conference will be conducted under the following general guidelines.

b. The Director or Hearing Officer will preside over any prehearing conference and rule on preliminary matters in any proceeding pending before the Commission.

c. The Secretary or Hearing Officer will notify the applicant and any person who has filed a protest or intervention of the prehearing conference, and will direct the attorneys for the parties, and pro se parties, to appear in order to expedite the hearing or settle issues, or both.

d. All parties will be prepared to discuss all procedural and substantive issues, and will be authorized to make binding commitments on all procedural matters.

e. Preparation should include advance study of all materials filed and materials obtained through discovery.

f. Failure of any person to attend the prehearing conference, after being notified of the date, time, and place will be a waiver of any objection and will be deemed to be a concurrence to any agreement reached, or to any order or ruling made at the prehearing conference, including the entry of a default judgment or the dismissal of a protest.

g. A prehearing statement may be required of any party.

h. At any prehearing conference, the following matters may be considered:

(1) Offers of settlement or designation of issues;

(2) Simplification of and establishment of a list or summary of the issues;

(3) Bifurcation of issues for hearing purposes;

(4) Admissions as to, or stipulations of facts not remaining in dispute or the authenticity of documents;

(5) Limitation of the number of fact and expert witnesses;

(6) Limitation on methods and extent of discovery, and a discovery schedule;

(7) Disposition of procedural motions; and

(8) Other matters raised by the parties, the Commission, or Hearing Officer.

i. At any prehearing conference, the following information may be required:

(1) An exchange and acceptance of service of exhibits proposed to be offered in evidence, and establishment of a list of exhibits to be offered;

(2) Establishment of a list of witnesses to be called and anticipated testimony times; and

(3) A timetable for the completion of discovery, if discovery is allowed.

j. The Hearing Officer will reduce to writing any agreement reached or orders issued at a prehearing conference. The Hearing Officer may require parties to submit proposed findings or orders.

k. It is the intent of this rule that a prehearing order will be binding upon the participating parties.

l. Subsequent to the prehearing conference and prior to the hearing on a contested matter, the parties will each prepare and submit to the Hearing Officer a recommended order for the Commission to consider for adoption at the time of hearing.

528. CONDUCT OF ADJUDICATORY HEARINGS.

a. **Contested applications.** Every party will have the right to present its case by oral and/or documentary evidence. The following will be the order of presentation unless otherwise established by the Hearing Officer or the Commission:

(1) Determination of whether any Commission members have a conflict of interest;

(2) Presentation of any prehearing order;

(3) Presentation of any motions and disposition of procedural matters;

(4) Presentation of any stipulations;

(5) Opening statement by the applicant;

(6) Opening statements by the respondent (and intervenor, if any);

(7) Presentation of the case-in-chief by the applicant;

(8) Presentations by respondent (and intervenor, if any);

(9) Presentation of statements under Rule 510, if any;

(10) Presentation of staff analysis, if requested by the Commission;

(11) Rebuttal by the applicant;

(12) Rebuttal by the respondent (and intervenor, if any);

(13) Closing statement by the applicant;

(14) Closing statements by the respondent (and intervenor, if any);

(15) Rebuttal closing statement by the applicant;

(16) Upon motion and for good cause shown, the Commission may permit surrebuttal;

(17) Closing of the record.

b. **Uncontested applications not approved administratively.** For uncontested applications not approved administratively pursuant to Rule 526., the applicant may present evidence in support of its application to the Commission. The order of presentation will be as follows, unless otherwise established by the Hearing Officer or the Commission:

(1) Determination of whether any Commission members have a conflict of interest;

(2) Presentation of staff analysis, if requested by the Commission. The Commission, at its discretion or upon request of the Director, may defer staff testimony until all of the evidence has been presented.

(3) Presentation of the case-in-chief by the applicant;

(4) Closing statement by the applicant;

(5) Closing of the record.

c. **Enforcement hearings.** In order to assure that all parties are afforded due process of law, the Commission will permit all parties to an enforcement hearing to present evidence and argument, and to conduct cross-examination. The enforcement matter will be heard by the Commission *de novo* unless the operator waives its right to a *de novo* hearing prior to or at the Commission hearing. The order of presentation in a hearing for an enforcement matter will be as follows, unless otherwise established by the Hearing Officer or the Commission:

(1) Determination of whether any Commission members have a conflict of interest;

(2) Opening statements by all parties;

(3) Presentation by the Director;

(4) Presentation by any intervenor;

(5) Presentation by the operator;

(6) Rebuttal by the Director;

(7) Rebuttal by any intervenor;

(8) Rebuttal by the operator;

(9) Closing statements;

(10) Finding regarding existence of violation;

(11) If the Commission first determines by a preponderance of the evidence that a violation or violations exist, presentation by the Director of any recommended fine or permit-related penalty, and/or recommended corrective action/abatement to be taken by the operator;

(12) Presentation of statements under Rule 510, if any;

(13) Response by the intervenor;

(14) Response by any operator;

(15) Rebuttal by the Director;

(16) Closing statements;

(17) Closing of the record.

d. **Closing of record.** At the conclusion of closing statements, the record will be closed to the presentation of any further evidence, testimony, or statements, except as such may occur in response to questions from the Commission.

e. **Witnesses.** Each witness will take an oath or affirmation before testifying. After a witness has testified, the applicant, the protestant or participating intervenors and any Commissioner may cross-examine that witness in the order established by the chairperson of the Commission.

f. **Limitations of testimony.** Where two or more protestants or intervenors have substantially similar interests and positions, the Commission may limit cross-examination or argument on motions and objections to fewer

than all the intervenors. The Commission may also limit testimony to avoid undue delay, waste of time or needless presentation of cumulative evidence.

g. **Commission findings and order.** After due consideration of written and oral statements, the testimony, and the arguments presented at hearing, the Commission will make its findings and order, based upon evidence in the record and, as appropriate, consistent with the Act and any rule, permit, or order made pursuant thereto. On behalf of the Commission, the Secretary will enter Commission orders within thirty (30) days of the Commission decision, as per §34-60-108(7), C.R.S. Orders will be final upon Commission approval, and effective for purposes of judicial review on the date of electronic delivery or mailing.

529. PROCEDURES FOR RULEMAKING PROCEEDINGS

a. **Initiation of rulemaking.** The Commission may initiate rulemaking on its motion or in response to an application filed by any person.

b. **Applications for rulemaking.** Any person may petition the Commission to initiate rulemaking. All applications for rulemaking will contain the following information:

(1) The name, address, and telephone number of the person requesting the rulemaking;

(2) A copy of the rule proposed in the application and a general statement of the reasons for the requested rule; and

(3) A proposed statement of the basis and purpose for the rule.

c. **Notice of proposed rulemaking.** All rulemaking hearings of the Commission will be noticed by publication in the Colorado Register not less than 21 days prior to the hearing and as otherwise specified in the Administrative Procedure Act, § 24-4-103, C.R.S.

d. **Development of proposed rules.** Prior to the notice of proposed rulemaking, the Commission or Director will establish a representative group of participants with an interest in the subject of the rulemaking as provided by §24-4-103(2), C.R.S. The Commission or Director may also use informal procedures to gather information, including, but not limited to public forums, investigation by Commission staff, and formation of rulemaking teams. Commissioners may participate in such informal proceedings.

e. **Content of notice.** The notice will state the time, date, place, and general subject matter of the hearing to be held. It may include a statement indicating whether an informal public meeting will be held, the time, date, place, and general purpose of the meeting, any special procedures the Commission deems appropriate for the particular rulemaking proceeding and a statement encouraging public participation. The notice will state that the proposed regulations will be available upon request from the office of the Commission, the date of availability, and any fee. The notice will include a short and plain statement which summarizes the intended action and states generally the basis and purpose of the rule.

f. **The rulemaking hearing.** The Commission will hold a formal public hearing before promulgating any rules or regulations. At that hearing, the Commission will afford any person an opportunity to submit data, views or arguments. The Commission may limit such testimony or presentation of evidence at its discretion and may prohibit repetitive, irrelevant, or harassing testimony

g. **Conduct of rulemaking hearings.**

(1) The Commission encourages any person to participate at rulemaking hearings. The times at which the public may participate will be determined at the discretion of the Commission. The Commission may, at its discretion, limit the amount of time a person may use to comment or make public statements. Oaths will not be required for public participation.

(2) The Commission encourages witnesses to make plain, brief, and simple statements of their positions. It also encourages submittal of written statements prior to hearing, with only an oral summary of such a statement at the hearing.

(3) The order of presentation at a rulemaking hearing will be as established by the Commission at the hearing.

(4) The Commission has the discretion to continue rulemaking hearings by announcement at the rulemaking hearing without republishing the proposed rule.

530. INVOLUNTARY POOLING PROCEEDINGS

a. An application for involuntary pooling pursuant to §34-60-116, C.R.S., may be filed at any time by an owner within a drilling and spacing unit established by Commission order prior to or after drilling of a well, but no later than ninety (90) days in advance of the hearing date for which the applicant proposes the matter be heard by the Commission, as per Rule 506.a. The Commission must receive evidence that owners were tendered a reasonable offer to lease or participate no less than ninety (90) days prior to an involuntary pooling hearing. An application for involuntary pooling may be filed concurrently with the sending of a reasonable offer to lease or participate. While an application for involuntary pooling may be filed at any time prior to or after the drilling of a well, any involuntary pooling order issued will be retroactive to the date the application is filed with the Commission unless the payor agrees otherwise.

b. Upon a showing by the applicant that is has complied with these rules, the Commission may deem an owner to be a nonconsenting owner in the area to be pooled if:

(1) After receiving an offer to participate and given at least sixty (60) days to review the offer, the owner does not elect in writing to consent to participate in the cost of the well concerning which the pooling order is sought. The offer to participate must include the following information, at a minimum:

A. The location and objective depth of the well, as demonstrated by:

(i) Directional wells will include the estimated Measured Depth and True Vertical Depth (MD, TVD), and

(ii) Horizontal wells will include the estimated Measured Depth, True Vertical Depth, and Lateral Length (MD, TVD, LL);

B. The estimated drilling and completion cost of the well (both the total cost and the owner's share);

C. The estimated spud date for the well or range of time within which spudding is to occur; and

D. Contact information for an operator representative who will be available to answer owner questions.

An authority for expenditure prepared by the operator and containing the information required above, together with additional information deemed appropriate by the operator may satisfy these obligations.

(2) After receiving an offer to lease and given at least sixty (60) days to review the offer, the unleased owner has failed or refused a reasonable offer to lease. In determining whether a reasonable offer to lease has been tendered under §34-60-116(7)(d), C.R.S., the Commission will consider the lease terms listed below for the drilling and spacing unit in the application and for all cornering and contiguous units that are under the proposed lease:

A. Date of lease and primary term or offer with acreage in lease;

B. Annual rental per acre;

C. Bonus payment or evidence of its non-availability;

D. Mineral interest royalty; and

E. Such other lease terms as may be relevant.

c. A nonconsenting owner will be subject cost recovery pursuant to §34-60-116(7)(b), C.R.S.

d. All offers to lease or participate must include contact information for a representative of the applicant to answer questions and the Commission's brochure describing its pooling procedures and the owner's options related to pooling.

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. 180900646
Hearing Process Rulemaking

This statement sets forth the basis, specific statutory authority, and purpose for amendments ("Pooling & Hearing Process Clean-Up Rules") to the Colorado Oil and Gas Conservation Commission ("Commission") Rules of Practice and Procedure, 2 CCR 404-1 ("Rules"). The Commission promulgated the Pooling & Hearing Process Clean-Up Rules on October 30, 2018.

In adopting amendments to the Rules, the Commission relied upon the entire administrative record for this Rulemaking proceeding, which formally began on July 29, 2018, when the Commission submitted its Notice of Rulemaking to the Colorado Secretary of State.

Background

On June 1, 2018, Governor Hickenlooper signed into law Senate Bill 18-230, which among other things, modifies the laws governing pooling orders that apply to nonconsenting mineral interest owners. As a result of the adoption of Senate Bill 18-230, the Commission must revise Rule 530. Additionally, the Commission identified revisions to other 500-Series Rules that are designed to facilitate and make more efficient and effective the Hearings Unit's internal processes.

Stakeholder and Public Participation

On July 3, 2018, the Commission issued a timeline to implement changes to the 500 Series Rules. The timeline announced stakeholder meetings on July 12, 2018 and August 9, 2018. The Commission encouraged public participation in the Rulemaking by allowing the public to comment on the proposed rules in advance of or during the hearing. Persons or organizations desiring to do so could also participate in the Rulemaking as a party. Parties could submit prehearing statements and comments, including alternative rules or amendments, and respond to the prehearing statements and comments submitted by other parties.

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., including:

- § 34-60-105(1), C.R.S. (Commission has the power to make and enforce rules necessary to enforce the Act);
- § 34-60-108, C.R.S. (Commission has authority to adopt rules governing practice and procedure before it);
- § 34-60-106(6), C.R.S (Commission has the authority to conduct hearings or to make any determinations empowered to under the Act); and
- § 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 Relevant Local Government.
- 500-Series Rules: 501, 503, 504, 506, 507, 509, 510, 511, 512, 519, 522, 528, and 530; and
- The Commission also adopted conforming or clarifying changes to the 500-Series Rules: 502, 505, 508, 513, 515, 516, 517, 518, 520, 521, 523, 524, 525, 526, 527, and 529.

Overview of Purpose and Intent

Under § 34-60-116, C.R.S, consenting and nonconsenting mineral owners must pay their proportionate share of the costs of development of an oil and gas well, and are eligible to receive their proportionate share of the revenues within an established drilling and spacing unit. When an owner declines to consent to pool their ownership interest with other owners in a unit, the Commission can order the mineral interests be statutorily pooled pursuant to § 34-60-116, C.R.S. Commission Rule 530 sets forth the application procedure for pooling nonconsenting mineral interest owners pursuant to §34-60-116, C.R.S.

Senate Bill 18-230 made several material amendments to §34-60-116, C.R.S. First, it added the provision that nonconsenting mineral owners are immune from liability for costs that result from a spill, damage or injury from an oil and gas well from which their minerals are being produced. §34-60-116(7) (a) (III), C.R.S. Second, Senate Bill

18-230 requires that before the Commission enters a pooling order that includes a nonconsenting mineral interest owner, at least 60-days prior to the hearing on the order the nonconsenting owner must have been provided a reasonable offer to lease their minerals, along with a brochure prepared by the Commission that explains pooling. §34-60-116 (7)(d)(I), C.R.S. Through amendments to the 500 Series Rules, the Commission can implement Senate Bill 18-230. A copy of the Commission's current pooling brochure is attached as Appendix 1. Additionally, the Commission identified clean-up revisions to other 500-Series Rules that are designed to facilitate and make more efficient and effective the Hearings Unit's internal processes, including facilitating an electronic filing system. The clean-up revisions also make the Commission Rules easier to understand. For example, all "shalls" were changed to "wills" to conform with more recent rules.

Amendments and Additions to Rules

100-Series Rules: New Definition

The Commission added the definition "Relevant Local Government" for clarity regarding hearing participation. Relevant local governments are those governments "with land use authority over" lands in an application pending before the Commission.

Rule 501.

Rule 501.b. was revised to specify that the Commission or Director may restrict discovery in matters where there is an abuse of process by a party. Rule 501.c. clarifies that timing for filing an appeal of a Commission decision is governed by the Colorado Administrative Procedure Act.

Rule 503.

Rule 503.a. was revised to make necessary procedural changes to facilitate the future implementation of an electronic filing system.

Rule 503.b.(2) was amended to clarify that "owners" within a unit may file an application for involuntary pooling. Referring to "owner" in Rule 503.b.(2), provides consistency between Rules 503.b. and 530 when describing who may file an application for involuntary pooling. Rule 503.b.(2) was also amended to incorporate the provisions of 503.b.(3) to simplify the rules.

Revisions to Rule 503.b.(9) were made to clarify and affirm existing legal requirements that only those who have a legally protected interest entitled to protection under the Act may seek relief from the Commission and conform language to that in Rule 509. The amendment to Rule 503.b.(9) does not change the standing requirements that a person must meet in order to avail themselves of Rule 503.b.(9).

The Colorado Supreme Court in *Romer v. Bd. of Cty. Comm'rs of Cty. of Pueblo, Colo.*, 956 P.2d 566, 577 (Colo. 1998), held that legal rights are created by statutory language, an agency's rules, or through the constitution. Consistent with *Romer*, an injury to a legal right that comes from the Act or Commission Rules must be alleged for someone to avail themselves of the relief provided under Rule 503.b.(9).

Rule 503.c. clarifies that an amended application is due when a material change is made to an original application after notice of the original application has been sent. Examples of material changes include, but are not limited to:

> -if the amended application alters the relief requested in the original application, such as increasing the number of wells requested in an application for increased well density.
>
> -if a change to the application would result in adding or deleting parties who are entitled to notice.
>
> -if a change in application would require consultation with the Colorado Parks and Wildlife or Colorado Department of Public Health and Environment.

Additionally, if upon review of a change to an application the Secretary determines that the change made is material, the Secretary will require the application be amended.

Submission of a corrected application will not require a change of the hearing date if the operator has not sent the notice of hearing on the application to interested persons. Only if the notice of hearing on the application has been sent to interested persons, will submission of an amended application result in the hearing date being continued to a future date.

Further, if an operator notices an application for hearing to persons whose interests the operator later determines are not the subject of the application, the operator does not need to re-notice the application. However, the operator must send to those persons whose interests are no longer subject of the application a letter notifying them that they were improperly noticed and do not need to attend the hearing.

Rule 503.d. provided that applicants must submit to the Commission a certificate of service demonstrating that service of the application was made on all persons entitled to notice. The provisions of Rule 503.d. were incorporated into Rule 507.a.(2), which addresses the notice requirements for applications filed with the Commission.

Similarly, the provisions of Rule 503.e. were incorporated in to Rule 507.a.(2). Rule 503.e. provided that the applicant will enjoy a rebuttable presumption that they served notice of the application on all persons entitled to notice. The provisions of

Rule 503.e. were incorporated into Rule 507.a.(2) so that the notice requirements are set forth in one section of the Rules.

Rule 504.

Rule 504 was revised to make necessary procedural changes to facilitate the future implementation of an electronic filing system and to more clearly describe the process for assigning docket numbers, and explaining when docket numbers must be used.

Rule 506.

Rule 506 was revised to make necessary procedural changes to facilitate the future implementation of an electronic filing system. These revisions include requiring applications to be filed no later than 90-days in advance of the hearing date at which it is proposed to be considered. Requiring applications to be filed 90-days prior to the proposed hearing date provides the Commission with ample time to process applications. It also provides staff and parties more time to ensure that the applications are complete and can promptly proceed to hearing without a continuance.

Also, a 90-day deadline for applications facilitates the implementation of changes imposed by Senate Bill 18-230 for pooling. Though Senate Bill 18-230 only affected pooling, creating more than one application filing deadline for pooling applications and all other applications would be inefficient and difficult to administer.

Rule 506.c. provides that the Director may, for good cause, continue a hearing to a future date. Similarly, the Rule was amended to provide that in addition to the Commission, the Director or a hearing officer may direct that additional time be allowed for filing deadlines.

Finally, under Rule 506, the Secretary has the discretion to bring to hearing or dismiss applications that have been repeatedly continued. If an applicant objects to proceeding to hearing, the Secretary has the discretion to dismiss the application at the discretion of the Commission or Director.

Rule 507.

The Commission revised Rule 507 to eliminate the requirement that interested parties serve a copy of the application separately from service of notice of hearing on the application. Rule 507 now requires applicants to serve interested parties only once with a copy of the application and a copy of the notice of when that application will be heard.

Additionally, the Commission's offices will no longer be used as the return mailing

address for hearing notices. Historically, the Commission sent out the notice of hearings and all returned mailings would come to the Commission. In recent years, changes to Commission rules delegated responsibility to applicants for mailing the notices of hearing; however the return mailing address remained the Commission's offices. Applicants will continue to be responsible for mailing out notices of hearing for their applications, and will provide their business address or the address of their legal counsel as the return address for all returned mail. This change informs applicants as to whether their addresses for interested persons is accurate and to follow up accordingly.

In its Prehearing Statement, the Colorado State Land Board ("State Land Board"), requested that Rule 507 require applicants provide the State Land Board with copies of applications that affect minerals owned by the State Land Board. The State Land Board noted that frequently it does not receive copies of applications that impact its minerals, or will be made aware of an application too late in the process to file a protest or seek intervention. In making this request, the State Land Board noted that Rule 507.c. provides that local governments, the Colorado Department of Public Health and Environment, and Colorado Parks and Wildlife must receive copies of applications submitted under 507.b.(1) and (3). The Commission agrees that providing the State Land Board with copies of applications that include minerals it owns will ensure that the State Land Board has the opportunity to participate in Commission proceedings.

The State Land Board also requested an amendment to Rule 507 that would have ensured it receive copies of any Notice of Alleged Violation ("NOAV") that affects lands it owns. Rule 523.b.(2)B. provides that when an operator is issued an NOAV that "result[s] in actual or threatened adverse impacts to public health, safety, and welfare, including the environment and wildlife resources...", the operator must "notify[] affected landowners, local governments, and other persons or businesses ...." The provision of Rule 523.b.(2)B. addresses the concern that State Land Board sought to remedy in its proposed amendment to Rule 507.

Rule 508.

In their prehearing statements, Adams County and Allied Local Governments proposed amendments to the Local Public Forum Rules. These proposed changes included changing the threshold number of proposed wells that would result in a Local Public Forum. The changes proposed by Adams County and Allied Local Governments are beyond the scope of this noticed rulemaking. The Notice of Rulemaking filed with the Secretary of State on July 29, 2018, stated that the amendments to be considered were directly related to the statutory changes made by Senate Bill 18-230 and to streamline the Commission's application process. The scope of the changes proposed for Rule 508 are beyond the limited purpose of the rulemaking noticed for hearing and therefore cannot be considered. However, the Commissioners directed staff to convene stakeholder meetings regarding potential

changes to the Rule and present to the Commission in early 2019.

Rule 509.

Rule 509 was revised to make necessary procedural changes to facilitate the future implementation of an electronic filing system.

The amendments to Rule 509.a.(1) clarify and streamline the Commission's existing Rules regarding who may protest or intervene in a hearing. Rule 509.a.(1) describes what is an affected interest for purposes of filing a protest, or intervention. To aid members of the public who may be unfamiliar with the Commission's Rules, Rule 509.a.(1)A. restates the Commission's definition of a Protestant. The Commission defines a "Protestant" as the person who "would be directly and adversely affected or aggrieved by the Commission's ruling in the proceeding, and that any injury or threat of injury sustained would be entitled to legal protection under the act." 100 Series Definitions. Rule 509.a.(1)A. was also amended to include the language contained in Rule 509.c. that provides a person determined not to be a protestant may still provide a statement to the Commission under Rule 510.

American Petroleum Institute raised a concern that an earlier version of the proposed amendment to Rule 509.a.(1)A. may inadvertently result in expanding the class of persons who may protest applications. The Commission's amendments to Rule 509.a.(1)A. are not intended to expand the class of persons that may intervene in proceedings before the Commission. The amendments adopted seek solely to provide greater clarity to the public that to protest an application, the person must be able to demonstrate that not only will they be "directly and adversely affected," but that they are also entitled to legal protection under the Act.

The language in Rule 509.a.(1)B. was amended to clearly provide that intervention by right will be granted to the relevant local government with land use authority over the lands that are the subject of an application. Rule 509.a.(1)B. previously required the local government to make a showing that it had concerns related to public health, safety, and welfare, including the environment and wildlife resources to be granted intervention by right. The amended Rule 509.a.(1)B. recognizes that the relevant local government is entitled to intervene by right so long as the application lands are within its jurisdiction.

However, the Commission expects that relevant local governments, like any party, will seek intervention only in circumstances where their interests are affected or harmed, and where the Commission has jurisdiction to hear and grant the relief sought. For instance, a relevant local government would be discouraged from seeking intervention in a spacing application when the Commission does not have jurisdiction to grant the relief requested as part of a spacing application.

The 100 Series defines "intervenor" as "a local government, or the Colorado Department of Public Health and Environment intervening solely to raise environmental or public health, safety and welfare concerns, or the Colorado Parks and Wildlife intervening solely to raise wildlife resource concerns, **in which case the intervention shall be granted of right**...." (emphasis added). Rule 509.a.(1)B. provides that a relevant local government no longer needs to intervene solely to raise environmental or public health, safety and welfare concerns.

The 100 Series definition of "intervenor" also provides that "a person who ... has demonstrated to the satisfaction of the Commission that the intervention will serve the public interest," Commission may in its discretion grant permissive intervention. In their prehearing statement, Adams County and Allied Local Governments requested that Rule 509.a.(1)B. be amended to provide that "any affected local government" may intervene by right in a hearing on an application. Adams County and Allied Local Governments argue such an amendment is necessary to allow local governments that are affected by oil and gas developments in neighboring jurisdictions to intervene by right. However, such an amendment would be inconsistent with the Commission's definition of "intervenor." Adoption of Adams County and Allied Local Governments proposal would result in amending the definition of intervenor, which is beyond the scope of the Notice of Rulemaking Hearing.

Further, in considering Adams County and Allied Local Governments position, the Commission recognized that the local government with land use authority over a proposed oil and gas development is uniquely qualified to bring to the Commission's attention concerns it has with a proposed development's impact on lands within that local government's jurisdiction. The Commission recognizes that there are situations where a neighboring local government may determine that impacts to it and its residents are significant and need to be brought before the Commission. In those circumstances, an affected local government may, under Rule 509.a.(1)B.ii., file an application to intervene permissibly in order to "serve the public interest."

Finally, parties asked that the Commission impose a 5:00p.m. deadline for all filings. This is a decision reserved for a hearing officer based on the circumstances of each matter and can be addressed in the Case Management Order.

Rule 511.

Rule 511 was revised to make necessary procedural changes to facilitate the future implementation of an electronic filing system. Rule 511.c. was amended to require that no less than 30-days prior to the hearing date applicants must submit the documents required under Rule 511.d. to substantiate an application to the Commission. Rule 511.c. had required that all such documents be provided no less than 21-days prior to the hearing.

Rule 512.

Rule 512 was amended to allow the Commission Chair, in the course of a hearing, to delegate to its legal counsel the responsibility of administering oaths to witnesses.

Rule 519

Rule 519 provides that the Colorado Rules of Civil Procedure will not be applied in Commission proceedings when they are inconsistent with Commission Rules or the Act. Rule 519 is amended to provide, consistent with *Weiss v. Dep't of Pub. Safety, Colorado State Patrol*, 847 P.2d 197, 199 (Colo. App. 1992), a hearing officer will apply the Colorado Rules of Civil Procedure unless they are inconsistent with Commission Rules or the Act.

Rule 522.

The Complainant provisions of Rule 522 were revised to clarify and reflect the process by which complaints lead to Notice of Alleged Violations (NOAVs). Rule 522.b.(2) was revised to clarify that the Director will investigate all complaints for which there is sufficient grounds to warrant an investigation. Rule 522.b.(3) was revised to acknowledge that only NOAVs issued for violations specifically alleged by a person will result in that person becoming a Complainant vested with the rights and responsibilities set forth in Rule 522.b. If an NOAV is issued for something other than what a person alleges to have occurred, that person will not be a Complainant under Rule 522.b.

Rule 522.b.(5) was revised to clarify that when a Complainant files a Petition for Review and requests a continuance of the hearing on the Petition for Review, the request for a continuance must be based on "actual, compelling evidence." Moreover, the actual, compelling evidence must be gathered by the Complainant after issuance of the Director's decision that is at issue in the Petition for Review. The Commission wishes to expeditiously address Petitions for Review, and for a continuance of a hearing on a Petition for Review to be granted there must exist evidence that was not before the Director when the decision was issued that would warrant delay in proceeding to hearing.

Rule 522.d. was revised to specify what the Commission requires operators to include in an answer to an NOAV.

Rule 523.

The Commission has the authority to increase a penalty up to the statutory maximum if it finds that certain aggravating factors existed. The Commission determined that

a violation of Commission Rules resulting in serious injury or death should be an aggravating factor. Rule 523.c.(3) was amended to add serious injury or death as an aggravating factor.

Additionally, Rule 523.g. was amended to provide that payment of a penalty imposed by the Commission must be in certified funds. The Commission has had instances where operators paid a penalty with a check, but had insufficient funds in the account that the check was drawn from.

Rule 528

Rule 528.g. was revised to make necessary procedural changes to facilitate the future implementation of an electronic filing system. Rule 528.g. was amended to clarify that for purposes of judicial review under the Administrative Procedure Act, orders are final upon the later of electronic service or the date of mailing. Only if a party does not have access to electronic service will an order be sent to that party via mail. Should an order be served electronically and by mail, Staff will endeavor to complete service on the same day. This amendment solely relates to the effective date for purposes of judicial review. It does not alter the date upon which Commission orders are effective and enforceable, which has been and remains the day the order is approved by the Commission.

Rule 530.

Rule 530 was amended to implement Senate Bill 18-230. Rule 530 now requires operators to provide evidence to the Commission that all owners were provided a reasonable offer to lease or participate 90-days prior to the hearing. Rule 530 was also revised to provide that an owner will be considered a nonconsenting mineral owner if after at least 60-days written notice of being tendered an offer to participate or lease the owner does not elect in writing to participate or lease. Rule 530 previously provided that an owner will be considered a nonconsenting mineral owner after 35-days written notice.

The City of Boulder proposed amendments to Rule 530 that would have required operators to negotiate leases in good faith with mineral owners. The City of Boulder asserts that when operators send mineral owners offers to lease concurrent with sending notice that it has filed an involuntary pooling application, operators are not negotiating in good faith. As with all Commission Rules, operators and owners are expected to act in good faith. The Commission expects operators to negotiate with mineral owners in good faith. If a mineral owner brings evidence to the Commission that an operator has failed to do so, such evidence will be considered in the course of the Commission's review of the application at hearing.

Rule 530 incorporates Section 116's requirement that a mineral owner was "tendered

a reasonable offer to lease or participate." Section 116 does not discuss good faith negotiations. Moreover, while some operators may provide mineral owners with a lease concurrent with an involuntary pooling application, doing so does not mean that future lease negotiations will not be conducted in good faith.

In amending Rule 530, the Commission was required to promulgate a rule that is consistent with the provisions of § 34-60-116(7)(d)(I), C.R.S. Section 106(7)(d)(I) provides in part that the Commission must receive "evidence that the unleased mineral owner has been tendered, no less than sixty days before the hearing, a reasonable offer to lease upon terms no less favorable than those currently prevailing in the area." In carrying out the provisions of Senate Bill 18-230, the Commission will not proceed to hearing on a protested involuntary pooling application unless a mineral owner has had sixty days to consider the offer to participate or lease. Based on the amended timelines, the thirty-day protest period now follows the sixty day review period. Meaning a mineral owner may file their protest to an involuntary pooling application, in accordance with Rule 509.a.(2), after the sixty-day review period has run. If a valid protest is received less than thirty days prior to the scheduled involuntary pooling hearing date, the matter may be continued to the following scheduled hearing.

Mineral owners must be diligent in promptly filing a protest after their sixty-day review period has terminated. The Commission recognizes the time and effort that is expended to prepare and file a protest. However, the Commission must ensure that applications are acted on efficiently, and unnecessary or unwarranted delays in filing a protest will be looked on with disfavor.

The Commission expects mineral owners to receive sixty-days to review an offer to lease or participate. If a mineral owner comes before the Commission and demonstrates that they were not afforded the full sixty-days before the application proceeded to Commission hearing, the application will be continued to the next hearing cycle. Notwithstanding the foregoing, a mineral owner may file a protest of the application at any time during the sixty-day review period.

Minimum Percentage Ownership Requirements

In their prehearing statements Adams County and Allied Local Governments proposed that Rule 530 be amended to establish a minimum 51% ownership interest in the lands sought to be involuntarily pooled in order to file an application. The Act prohibits the Commission from setting a minimum percentage ownership requirement. "The commission, **upon the application of any interested person**, may enter an order pooling all interests . . . ." § 34-60-116(6), C.R.S. (emphasis added). Not only would the proposed amendment violate the Act, it would disadvantage small mineral interest owners. Because the Act authorizes "any interested person" to file

an application for involuntary pooling, it empowers small percentage owners to seek pooling and to be paid for their minerals that another owner is draining.

Demonstration of a "Reasonable Offer"

Adams County proposed that Rule 530 be amended to require operators to include with their involuntary pooling application evidence of no less than ten lease offers accepted within the drilling unit. Adams County's proposal is inconsistent with the Act. The Act provides that a pooling order may only be entered upon "evidence that the unleased mineral owner has been tendered . . . a reasonable offer to lease upon terms no less favorable than those currently prevailing in the area at the time application for the order is made." § 34-60-116(7)(d)(I), C.R.S. The Act does not require a certain number of leases be provided to evidence that a "reasonable offer to lease" has been made. An operator must make a prima facie demonstration that an offer to lease or participate was reasonable. Once the operator has made such a demonstration, the mineral owner must show why the offer was **not** reasonable.

To show that an offer was not reasonable, a mineral owner may provide the Commission with copies of leases in the unit and for all cornering and contiguous units that are under the proposed lease. A mineral owner may also provide copies of lease offers to mineral owners in the area. The Commission would also accept testimony from lessors in the area as to the terms of their leases to support the mineral owners' argument that the lease offer was not reasonable.

The Commission may also take into consideration 1) how many offers to lease in the unit were accepted; 2) the percentage of the unit that is leased at the time of hearing on the application; 3) the operators responsiveness to inquiries from mineral owners; 4) costs of the development and the proposed timeframe for completion; and 5) whether the operator has undertaken reasonable due diligence to identify and locate owners within the unit. This is not an exhaustive list of items that the Commission may consider when determining whether an offer to lease was reasonable.

Finally, in the course of the hearing process, a mineral owner may request to serve discovery upon the operator so as to gather evidence that an offer made was not reasonable. It is within the Hearing Officer's discretion whether to allow, limit, or disallow such discovery, per Rule 519.

Evidence of Mineral Ownership in Drilling Units

Allied Local Governments' prehearing statement requested that several Commission Rules be amended to require that operators supply duplicates of oil and gas leases to support applications for involuntary pooling and drilling units. Evidence of ownership of mineral interests is required only when that ownership is challenged. If evidence of mineral ownership is challenged, the Commission will consider the evidence

brought by the mineral owner and determine whether it is sufficient to substantiate ownership.

Effective Date

The Commission adopted the proposed amendments, which added to and amended Rules 501, 503, 504, 506, 507, 509, 510, 511, 512, 519, 522, 528, and 530, at its hearing on October 30, 2018, in Cause No. 1R, Docket No. 180900646. The amendments to most rules will become effective, per § 24-4-103, C.R.S., twenty days after publication in the Colorado Register. Any revision that alters the timing of submission of applications or other documents to the Commission, or that implement the electronic filing system, will become effective for the April 2019 hearing cycle. Thus applications for that cycle will be due on February 28, 2019.

APPENDIX 1

FREQUENTLY ASKED QUESTIONS RELATED TO STATUTORY POOLING IN COLORADO

Why am I receiving this brochure?
A review of public property records indicates you may own unleased minerals that an oil and gas operator has asked the Colorado Oil & Gas Conservation Commission (COGCC) to "pool." The COGCC prepared this brochure to help inform mineral owners about "pooling" of mineral interests in Colorado and the State's administrative process.

What is pooling, why pool minerals, and why does Colorado have a pooling law?
Pooling is the joining together of various mineral interests into one large "drilling and spacing unit" in order to drill a single well to drain a large area of oil and gas, with each person who owns a mineral interest in the unit receiving a share of the proceeds.

In the early days of oil and gas production, before pooling laws, mineral owners were required to each drill a well to receive proceeds from the minerals they owned. Owners competed with their neighbors to pump as much oil as possible, as quickly as possible. Consequently, oil and gas operators drilled as many wells as they could on the properties they owned or leased to maximize production, which led to some areas with numerous wells scattered across neighborhoods. This resulted in unnecessary development of the surface land, many more wells than necessary, and wasted oil and gas resources.

Pooling provides controlled and far less disruptive drilling. Limiting the number of wells within a resource area reduces impacts on the environment and lowers costs, which boosts efficiency. Pooling allows each owner to proportionately share in the costs and proceeds from oil and gas development from a pooled unit, without requiring each mineral owner to drill his or her own well. And pooling ensures that a mineral owner who refuses to enter into a lease does not prevent the development and production of oil and gas minerals owned by others.

Colorado adopted its "pooling law" over fifty years ago in order to ensure each mineral interest owner pays his/her proportionate share of the costs of oil and gas development and receives a proportionate share of the revenues once production is established. The COGCC establishes "drilling and spacing units" determining the number of oil and gas wells that may be drilled in the unit to efficiently and effectively capture all available mineral resources. After a drilling and spacing unit is established, any mineral owner in the unit can begin pooling the interests of mineral owners. The pooling process can be done voluntarily through private contract by those who own or lease minerals. Or it can be done through a COGCC administrative hearing process, often called "statutory pooling" or "forced pooling".

What is the process to pool minerals in Colorado?
At least 90 days before a COGCC hearing, an owner takes two steps: (1) submitting an application to the COGCC requesting to pool the unit's mineral owners; and (2) sending all unleased mineral owners the pooling application, an offer to lease, and an offer to participate in the drilling, completion, and operation of the proposed wells. Each unleased mineral owner has 60 days to choose whether to lease, participate, or take no action. Regardless of your choice, you are not required to participate in the pooling hearing before the COGCC. As an unleased mineral owner, you may engage in the COGCC's pooling process by filing a formal protest prior to the hearing, or by submitting a public comment, which COGCC refers to as a "510 statement".

What are my options?

With this brochure, you also should have received information from the oil and gas operator regarding leasing your minerals or participating in the well. You have several options:

1. Lease your minerals to an oil and gas operator, pursuant to an Offer to Lease, which is a private agreement between you and the operator that generally entitles you to reasonable royalties on oil and gas production from the unit. You may lease your minerals to any person, not just the operator that sent you this information.
2. Elect to participate in the drilling, completion, and operation of the wells proposed by the operator. In this case, you will be expected to pay your proportionate share of the costs of drilling, completion, and operation; and will receive a greater, proportionate share of the proceeds.
3. Take no action. Your minerals will be pooled and you will be deemed a "nonconsenting party" through COGCC process and rules. As a nonconsenting party, Colorado statute dictates you will receive 12.5% of your proportionate proceeds from the unit. The remaining 87.5% of your proceeds will be applied to offset your share of 200% of the drilling costs and 100% of the surface costs. Once these costs are paid, you will receive 100% of your proceeds.

What if I don't consent to development of my minerals?

If you do not sign a lease offer and do not elect to participate, the operator will ask the COGCC to deem you a "nonconsenting party" as part of the pooling process. As a nonconsenting party, you will be unable to participate as an owner in the drilling of the well and will not have an opportunity to negotiate a lease. Your minerals will then be pooled. As a nonconsenting owner, Colorado statute provides that you will receive 12.5% of your proportionate proceeds from the unit, based on your mineral acres compared to all mineral acres in the drilling unit. The remaining 87.5% of your proceeds will reimburse those mineral owners who opted to participate in the well – providing 200% of drilling costs and 100% of surface equipment costs attributable to your mineral interest. You reimburse participating mineral owners 200% of your proportionate drilling costs, instead of 100%, as a "risk penalty" to compensate participating mineral owners for the risk they accepted as part of the agreement for drilling a well. Once your 87.5% of production revenue covers 200% of drilling costs and 100% of surface equipment costs, the well "pays out" and you will then receive 100% of your proportionate share of proceeds and also be responsible for your share of costs going forward.

If the operator files an application with the COGCC to deem you a nonconsenting party, you have the opportunity to protest that application. You must file that protest directly with the COGCC as required under COGCC Rule 509.

By law, nonconsenting parties are immune from liability for costs arising from spills, releases, damage, or injury resulting from oil and gas operations on a unit.

For more information about the COGCC administrative hearing process and deadlines, please refer to the COGCC website at http://cogcc.state.co.us. You may also contact the COGCC at dnr.ogcc@state.co.us or 303-894-2100. Please note, COGCC staff are not available to provide legal advice. COGCC recommends that you engage an attorney with knowledge of oil and gas matters to assist you with reviewing any offers you receive from an oil and gas operator or other person.