COLORADO
Oil & Gas Conservation Commission
Department of Natural Resources
1120 Lincoln Street, Suite 801
Denver, CO 80203

May 16, 2019

SB 19-181 Required Director Objective Criteria

1) Oil and Gas Locations within 1,500'[1] of a Building Unit or High Occupancy Building, which include Urban Mitigation Area ("UMA") and Large UMA Facility ("LUMAF") locations.

2) Oil and Gas Locations within a municipality.

3) Oil and Gas Locations within 1,500'[1] of a municipal boundary, platted subdivision, or county boundary.

4) Oil and Gas Locations within 2,000'[1] of a school property line.

5) Oil and Gas Locations within:

a) a Floodplain or a Floodway;
b) an identified public drinking water supply area (e.g., Rule 317B buffer zone, or the Brighton Public Water System); or
c) a Sensitive Area for water resources.

6) Oil and Gas Locations within a Colorado Parks and Wildlife ("CPW") mapped Restricted Surface Occupancy Area ("RSO") or Sensitive Wildlife Habitat ("SWH"), or locations receiving site- or species-specific CPW comments.

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[1] This distance is measured from the edge of the disturbed Oil and Gas Location and not from the Well or Production Facility as in the buffer or exception zone determination. Measuring from the edge of the disturbed Oil and Gas Location is more protective of public health, safety, welfare, the environment, and wildlife resources since it is a greater distance than the buffer or exception zone.

7) Oil and Gas Locations within 1,000'[1] of a Designated Outdoor Activity Area.

8) Oil and Gas Locations with storage of hydrocarbon or produced liquid in more than 18 tanks or in excess of 5,200 barrels.

9) Oil and Gas Locations where the operator is using a surface owner protection bond pursuant to Rule 703 to access the surface.

10) Oil and Gas Locations where the Relevant Local Government, or state or federal agency requests additional consultation.

11) Oil and Gas Locations where the operator requests the Director grant a Rule 502.b Variance for an associated permit application.

12) Oil and Gas Locations with an access road (the road constructed from the public road to the Oil and Gas Location) within a RSO, SWH, 317B buffer zone, or within 200' feet of a Building Unit on lands not subject to a Surface Use Agreement.

13) A proposed Centralized Exploration and Production Waste Management Facility.

14) A Request to Vent or Flare (Form 4) from a location within 1,500'[1] of a Building Unit or High Occupancy Building Unit or within the Denver Metro/North Front Range 8-Hour Ozone Nonattainment Area.

15) An Intent to Plug (Form 6) for a well that is associated with a stray gas investigation.

16) Oil and Gas Locations proposed by an Operator who is subject to additional individual or blanket financial assurance requirements pursuant to Rule 702.a.

Current Issues Facing DNR & OGCC

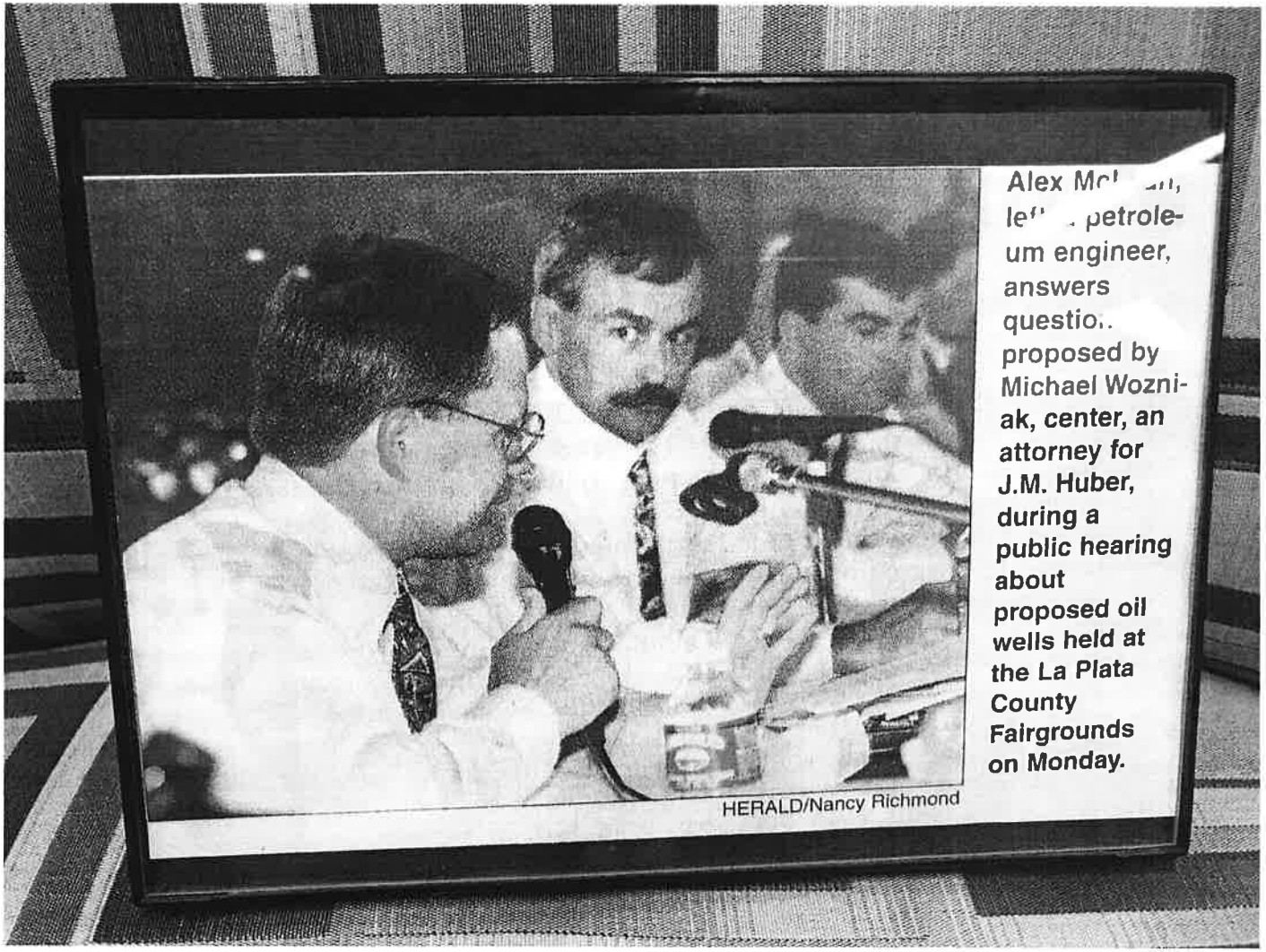
Energy & Environment Symposium
Rifle, CO

Thursday, April 18, 2019

COLORADO
Oil & Gas Conservation Commission
Department of Natural Resources

Jeff Robbins
Director

Who am I?



HERALD/Nancy Richmond

Alex Mc[illegible], le[illegible] petroleum engineer, answers questio.. proposed by Michael Wozniak, center, an attorney for J.M. Huber, during a public hearing about proposed oil wells held at the La Plata County Fairgrounds on Monday.

Regulatory Changes: SB19-181

What it DOES:

- Reprioritizes COGCC's mission/ approach to regulation
- Empowers local governments to exercise greater oil and gas oversight
- Changes the Commission – twice

What it DOESN'T do:

- Mandate a statewide moratorium on oil and gas development

SB19-181 - Where will it take us?

- Greater collaboration between regulators
  - COGCC
  - Local Governments
  - AQCD
- Increased certainty statewide for permitting processes
- Better planning for oil and gas development, which allows for improved infrastructure

SB19-181 - How will we get there?

- Finalize Objective Criteria with public comment
- Reschedule April hearing to May
- Continue to review and approve permits that satisfy existing rules and SB19-181
- Complete initial rulemaking by July 1, 2020, on: reprioritizing Commission's mission, alternative site analysis, cumulative impacts, and flowines
- Create professional Commission

DNR Update: Leadership

Executive Director Dan Gibbs

Deputy Director Tim Mauck

Amy Moyer, Assistant Director for Water

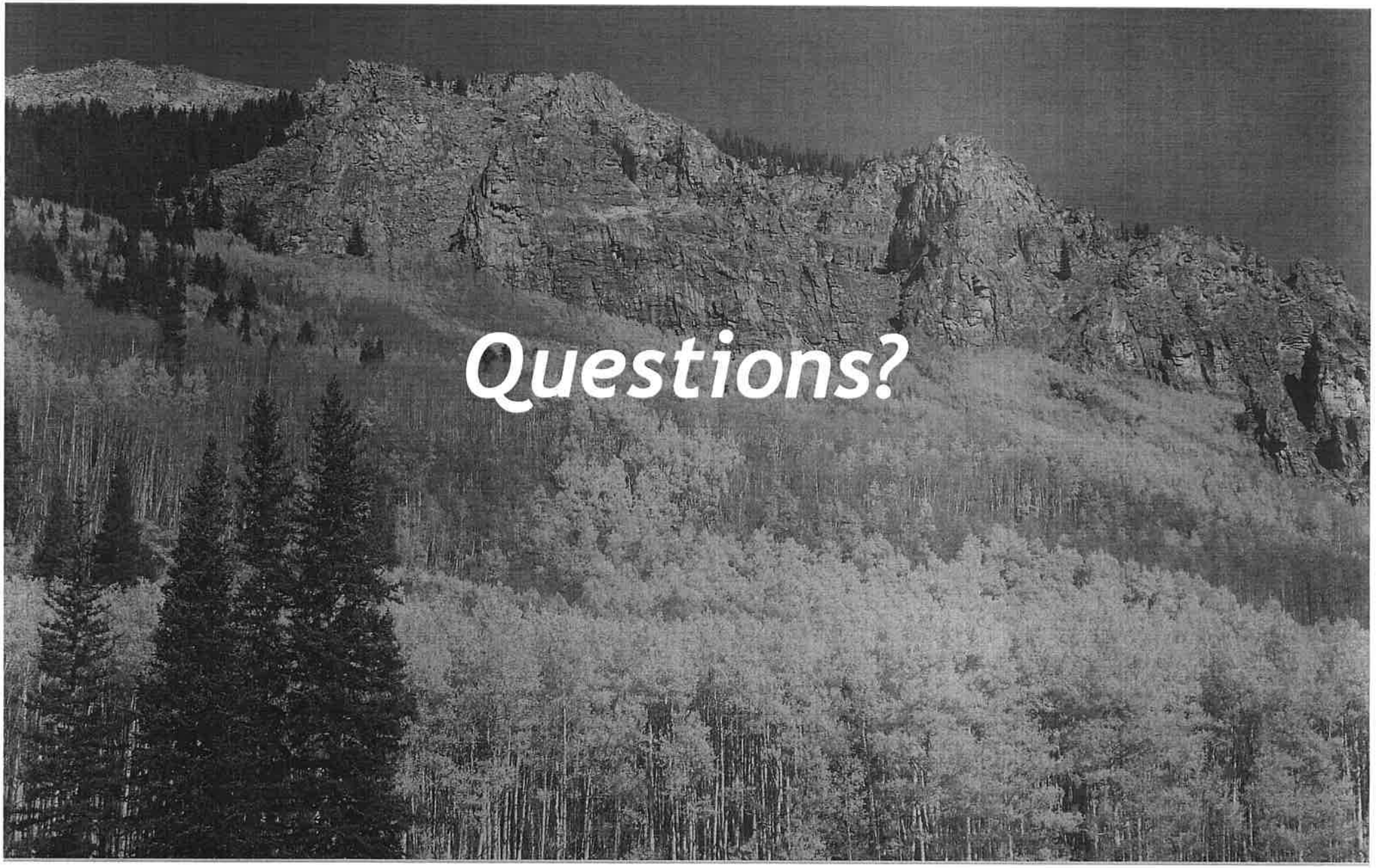
Julie Murphy, Assistant Director for Energy and Minerals

Doug Vilsack, Legislative Liaison

Johnie Abad, Executive Assistant

DNR Update: 4 Priorities

- Secure sustainable funding for Colorado Parks and Wildlife
- Increase access to and availability of public lands
- Implement Colorado Water Plan
- Ensure smooth, effective implementation of SB19-181



COLORADO
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Department of Natural Resources

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Oil and Gas in the time of 181

180 degrees from yesterday

SB 181 Sweeping and Comprehensive

Foster vs Regulate

Repeal State preemption

Pooling now has 45% minimum threshold

Air Quality - measure measure measure

Economically reasonable & technically feasible gone and replaced with reasonable or reasonable and necessary

Commission reorganization

Full local control and regulation of the surface

Waste subject to health and safety and environment

1041 exemption repealed

SB 181 Amendments that Mattered

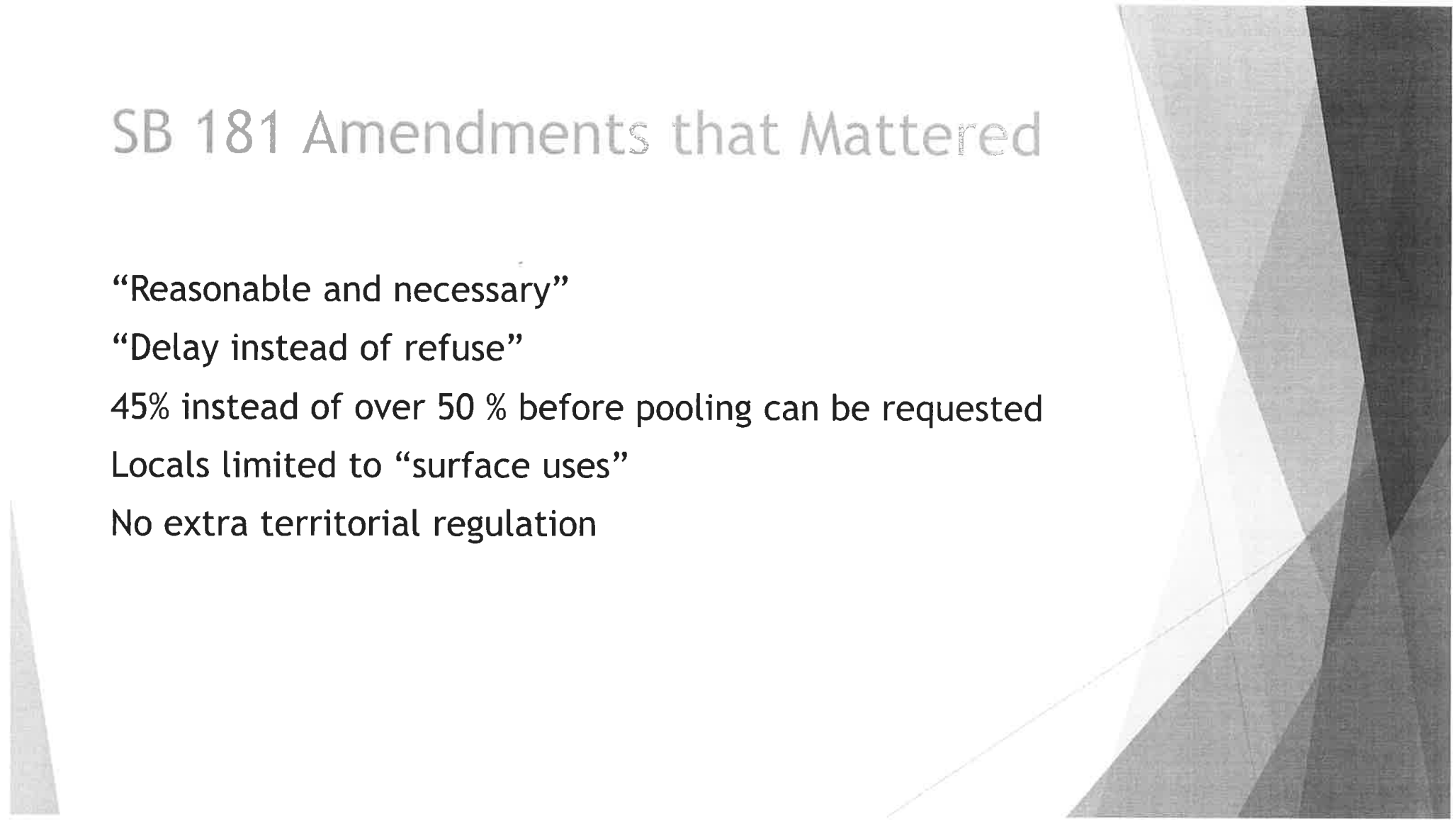
"Reasonable and necessary"

"Delay instead of refuse"

45% instead of over 50 % before pooling can be requested

Locals limited to "surface uses"

No extra territorial regulation

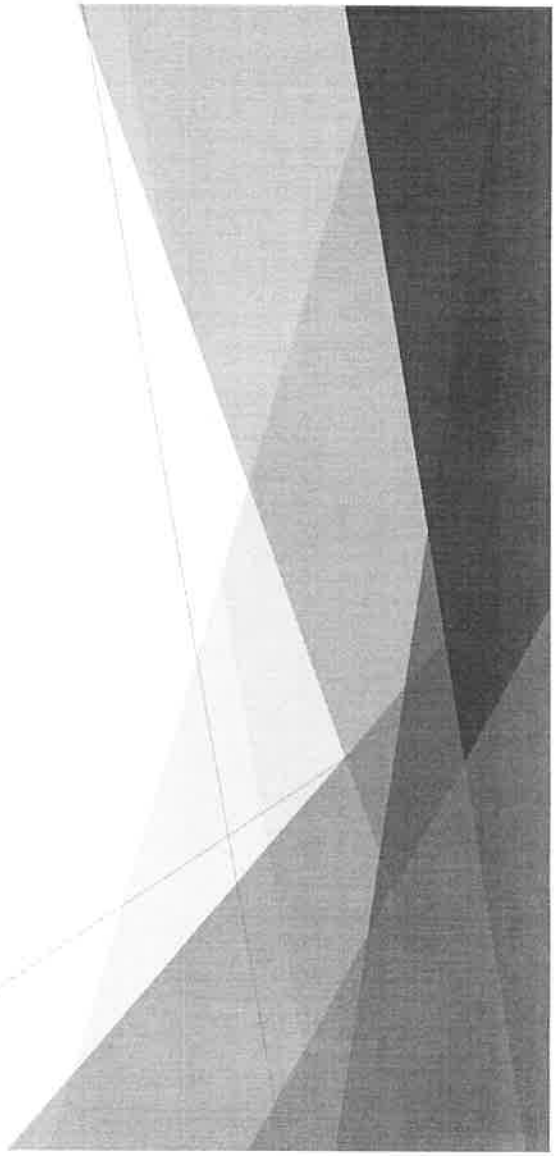


SB 181 - Local land Use Authorities

Well and facility location

Access	Land Use
Noise	Water quality and source
Odor	Dust
Setbacks	Light
Health and safety	Air emissions and air quality
Inspection	land disturbance
Enforcement	Reclamation
Fees and fines	Traffic and transportation
Financial assurance	Nuisance effects and impacts

Plan and regulate consistent with the constitutional rights



SB 181 - What is to Come

Rulemakings at the state

- 2.5 (a) protect and minimize adverse impacts
- 11(c) Alternative site location and cumulative impacts
- (19) Review Flowline and shut-in and abandoned well rules

New state commission - temp and permanent

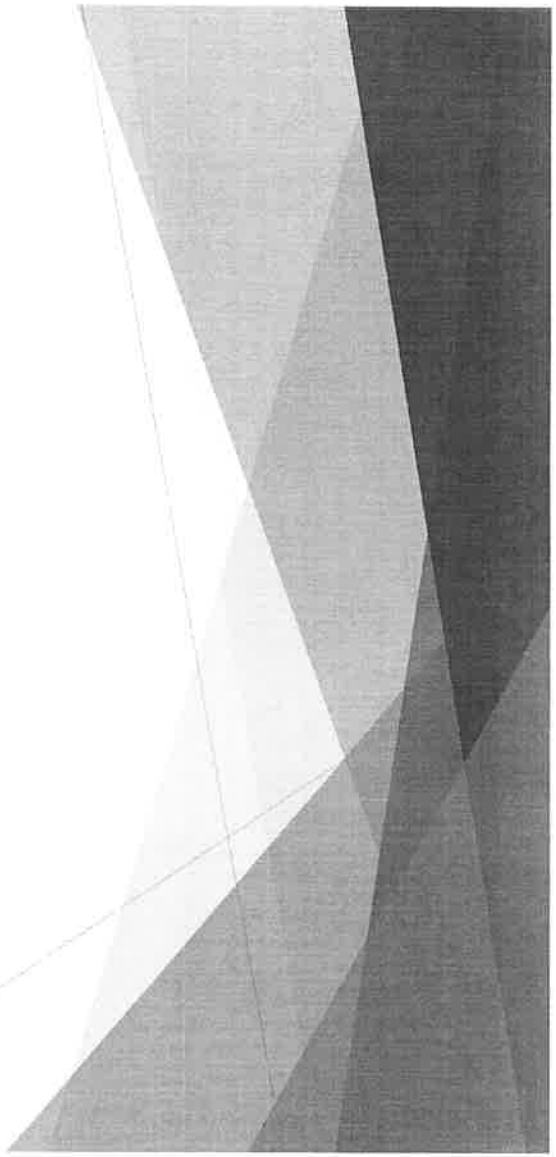
New permit fees

6000+ permits subject to a new filter process

Lengthening of permit times

Locals with authority to say no or not here, over there

New local regulations



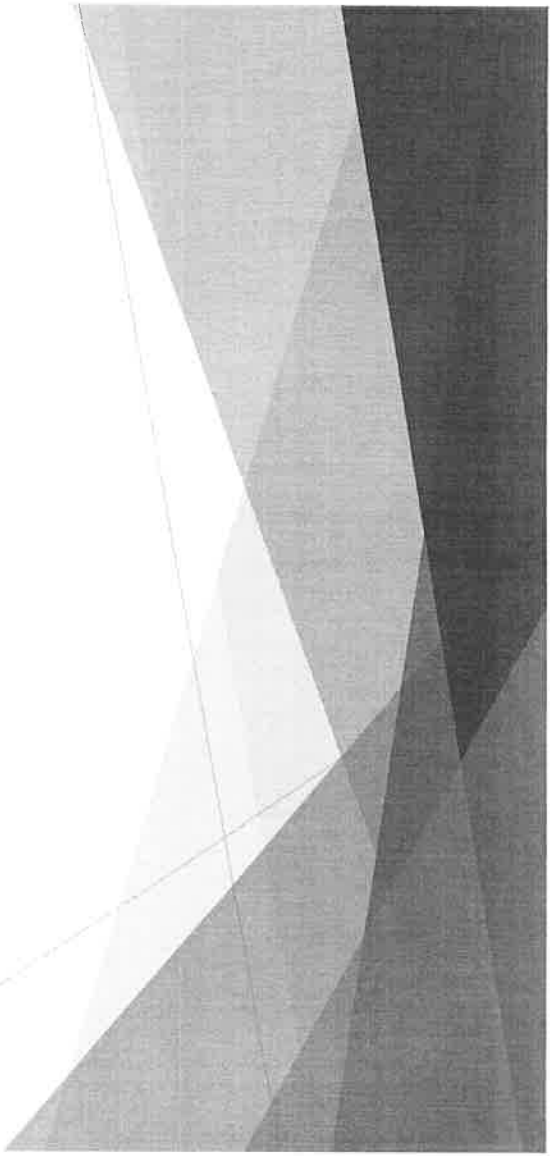
SB 181 Possible Effects to the State

Likely slowdown in new wells

Likely loss of revenue to the state

Likely loss of revenue to schools

Increase need for the state to backfill the school budget



SB 181 - What Industry Needs To Do

Build Trust

Change the Narrative

Educate and Emoticate

- Feelings Drive Decisions
- Bring Passion for Safety, for Community, for the Poor

Redouble efforts to do right by our neighbors

Empowers ourselves

- Volunteer on local boards and commissions
- Get elected
- Be involved in local rulemakings
- show up to hearings - make your voices heard

Companies need to encourage and trust their people to be involved

500 SERIES RULEMAKING
INITIAL DRAFT OF PROPOSED RULES

DEFINITIONS
(100 SERIES)

COMMISSION ~~shall~~means the Oil and Gas Conservation Commission of the State of Colorado, five or more commissioners acting on behalf of the Oil and Gas Conservation Commission, an Administrative Law Judge, or a Hearing Officer as the context requires.

GENERAL RULES

207. TESTS AND SURVEYS

b. Bradenhead monitoring.

(1) The Director shall have authority to designate specific fields or portions of fields as bradenhead test areas. At all wells within the bradenhead test area, the bradenhead access to the annulus between the production and surface casing, as well as any intermediate casing, shall be equipped with fittings to allow safe and convenient determinations of pressure and fluid flow. All valves used for annular pressure monitoring shall remain exposed and not buried to allow for COGCC visual inspection at all times. A rigid housing may be used to protect the valves, provided that the housing can be easily opened or removed by the operator upon request of COGCC staff. Any such proposed bradenhead test area shall be designated by notice to all operators on record within the area and by publication. The proposed designation, if no protests are timely filed, shall be placed upon the Commission consent agenda for the regular monthly meeting of the Commission following the month in which such notice is given, and shall be approved or heard by the Commission in accordance with Rule 531~~520~~. Such designation shall be effective immediately, upon approval by the Commission.

SERIES DRILLING, DEVELOPMENT, PRODUCTION AND ABANDONMENT
(300 Series)

303.h. Permits in areas pending Commission hearing. The Director may withhold the issuance of any Applications for Permit-to-Drill, Form 2, for any well or proposed well that is located in an area for which an application has been filed, or which the Commission has sought, by its own motion, to establish drilling units. The ~~, in which case the~~ hearing thereon shall be held at the next meeting of the Commission, or as soon as practicable before an Administrative Law Judge or Hearing Officer ~~at which time the matter can be legally heard~~.

304. FINANCIAL ASSURANCE REQUIREMENTS

Prior to drilling or assuming the operations for a well an operator shall provide financial assurance in accordance with the 700 Series rules. When an operator's existing wells are not in compliance with the 700 Series, the Director may withhold action on an Application for Permit-to-Drill, Form 2, or Oil and Gas Location Assessment, Form 2A, until such time as a hearing on the permit application is held by the Commission. Such hearing shall be held at the next regularly scheduled Commission hearing, or as soon as practicable before an Administrative Law Judge or Hearing Officer ~~at which time the matter can be legally heard~~.

317. GENERAL DRILLING RULES

Unless altered, modified, or changed for a particular field or formation upon hearing before the Commission the following shall apply to the drilling or deepening of all wells.

a. **Blowout prevention equipment ("BOPE").** The operator shall take all necessary precautions for keeping a well under control while being drilled or deepened. BOPE, if any, shall be indicated on the Application for Permit to Drill, Deepen, Re-enter, or Recomplete and Operate (Form 2), as well as any known subsurface conditions (e.g. under or over-pressured formations). The working pressure of any BOPE shall exceed the anticipated surface pressure to which it may be subjected, assuming a partially evacuated hole with a pressure gradient of 0.22 psi/ft. [For BOPE requirements in Designated Setback Locations see Rule 604.c.(2). For statewide BOPE specification, inspection, operation and testing requirements see Rule 603.e.]

(1) The Director shall have the authority to designate specific areas, fields or formations as requiring certain BOPE. Any such proposed designation shall occur by notice describing the area, field or formation in question and shall be given to all operators of record within such area or field and by publication. The proposed designation, if no protest is timely filed, shall be placed on the Commission consent agenda for its next regularly scheduled meeting following the month in which such notice was given. The matter shall be approved or heard by the Commission in accordance with Rule 53120. Such designation shall be effective immediately upon approval by the Commission, except as to any previously-approved Form 2.

318A. GREATER WATTENBERG AREA SPECIAL WELL LOCATION, SPACING AND UNIT DESIGNATION RULE

e. **GWA infill.**

(5) Notice and hearing procedures. For proposed boundary wells, wellbore spacing units, and additional producing formations provided by this subsection e., and for proposed horizontal wells and horizontal wellbore spacing units as provided by 318A.a.(4)D., the following process shall apply:

C. If an objection pursuant to subsection B. is timely received, the operator may seek a hearing before the Commission on the objection. The objecting party will bear the burden of proving that the notice provided by the operator does not comply with the informational requirements of subsection A., above, that the operator is not an owner, as defined by the Act, and/or the approval of the boundary well location, wellbore spacing unit, horizontal well, horizontal wellbore spacing unit or additional producing formation would either create waste or adversely affect the objecting party's correlative rights. The objection may be ~~first~~ presented to an Administrative Law Judge or Hearing Officer. After hearing the objection, the Administrative Law Judge or Hearing Officer may issue a recommended order that sets forth whether the objection shall stand or be dismissed. ~~the hearing officer of the Commission and such hearing officer, based on the facts, may recommend to the Commission that such objection shall stand or be dismissed.~~

325. UNDERGROUND DISPOSAL OF WATER

b. **Withholding approval of underground disposal of water.** The Director may withhold the issuance of a permit and the granting of approval of any Underground Injection Formation Permit Application, Form 31 and any Injection Well Permit Application, Form 33 for any proposed disposal well when the Director has reasonable cause to believe that the proposed disposal well could result in a significant adverse impact on the environment or public health, safety and welfare. In the event such approval is not granted, the Director shall immediately advise the operator and bring the matter to the Commission at its next regularly scheduled hearing, or as soon as practicable before an Administrative Law Judge or Hearing Officer.

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, Director, or Administrative Law Judge or Hearing Officer ~~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 the~~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 may 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 is ~~are~~ deemed by the Commission, Director, or Administrative Law Judge or Hearing Officer ~~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 fourteen (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, including those recommended orders that become

the decision of the Commission, 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 Oorder ~~f~~Finding ~~v~~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 Oorder ~~f~~Finding ~~v~~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), 303.j.(2), or 604.a.(6)A 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 a hearing on a school facility or child care center setback determination pursuant to Rule 604.a.(6)B., only the operator or school governing body may be the applicant.

(10) For purposes of seeking relief or a ruling from the Commission on any other matter not described in (1) through (~~9~~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. Unless the Commission otherwise orders, all matters submitted to the Commission for adjudication, except for those applications filed pursuant to Rules 503.b.(5), and (9) or 529, will automatically be assigned to an Administrative Law Judge or Hearing Officer. An assignment to an Administrative Law Judge or Hearing Officer shall encompass all issues of fact and law concerning the matter unless the Commission specifies otherwise in a written order.

d. The Commission, Director, Administrative Law Judge, or Hearing Officer may require any additional information necessary pursuant to these rules to ensure the application is complete on its face. If the Commission, Director, Administrative Law Judge, or Hearing Officer finds an application to be without merit, the application may be rejected.

e. A party filing an application may amend its application at any time prior to ~~n amended application will be required if the applicant makes any material change to a filed application after notice has~~ notice being~~been~~ sent consistent with~~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 other hearing dates. , based on its new submission date. require the application to be renoticed consistent with Rule 507. An amended application will be deemed materially changed if the amended application~~ A material amendment is a change that alters the requested relief of the original application, requires notice to additional persons, or as otherwise determined by the Commission, Administrative Law Judge, or Hearing Officer~~Secretary.~~ If the application requires a material amendment, the Commission, Administrative Law Judge, or Hearing Officer may in its ~~-~~discretion dismiss the application.

f. 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.

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

h. As necessary, Commission staff will evaluate all applications and prepare an evaluation, which may include a recommendation on the merits of the application. Any such evaluation or recommendation will be part of the administrative record to be considered by the Commission, Administrative Law Judge, or Hearing Officer.

i. In order to continue to receive copies of the pleadings filed in a specific proceeding a party who receives notice

of the application will ~~shall~~ file with the ~~Secretary~~ Commission a protest or intervention in accordance with these rules.

j. 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~~ a certificate of service identifying the document served and filed with the Commission and ~~the party filing the pleading~~ that the pleading was ~~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, or in a manner determined by the Director.

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 and filings will contain the same docket number ~~and all subsequent filings must include the assigned docket number~~. Any pleading or filing ~~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, Administrative Law Judge, or Hearing Officer will hold a public hearing, scheduled in accordance with Rule 506. at such time and place as may be prescribed by the Commission, Administrative Law Judge, or Hearing Officer. Any party will be entitled to be heard as provided in these rules and regulations. The foregoing will not apply to recommended orders of non-protested matters, the issuance of an emergency order, ~~N~~notice of ~~A~~alleged ~~V~~violation, or ~~C~~cease and ~~D~~desist ~~O~~order.

506. HEARING DATE/CONTINUANCE

a. All applications will be docketed for hearing before the Commission, Administrative Law Judge, or Hearing Officer. The date of hearing will depend upon hearing availability. No application may be heard until the applicant has complied with all notice, evidentiary and other application requirements set forth in the Commission's rules. ~~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.~~

b. The Secretary, Administrative Law Judge, or Hearing Officer ~~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 unprotested application. ~~matter~~ received no later than ~~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 Secretary, Administrative Law Judge, or Hearing Officer will have the discretion to grant subsequent requests for a continuance of an unprotested application. ~~The~~ Commission, ~~or~~ Director, Administrative Law Judge, or Hearing Officer may at any time ~~direct the Secretary to~~ discontinue granting continuances of an application or dismiss an application.

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

d~~c~~. The Commission, Director, Secretary, Administrative Law Judge, 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 ordered ~~directed~~ by the Commission, Director, Administrative Law Judge, or Hearing Officer.

e~~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. The Aapplication 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, the 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.** The a~~A~~pplication 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 the 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; and~~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 (7) 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 (7) 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 fourteen (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~~ the 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 (7) 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 twenty-one (21) days before the date of the local public forum the Director will mail to the listed surface owners notice thereof.

(3) Within fourteen (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 fourteen (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 (7) 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 fourteen (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) An Administrative Law Judge or Hearing Officer will preside over the local public forum. The Administrative Law Judge or 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 5145.

(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 Administrative Law Judge or 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 (7) 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 Administrative Law Judge or 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. A person who had standing to file the application in the first instance.

B. 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 Commission, Administrative Law Judge, or Hearing Officer that a person is not a protestant, any statement provided will be considered a written comment submitted pursuant to Rule 510.

C~~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, Administrative Law Judge, or Hearing Officer that an intervention would serve the public interest may be recognized as a permissive intervenor. The Commission, Administrative Law Judge, 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 Commission~~Secretary~~, and served on the applicant's counsel, if the applicant is represented by counsel, within ~~at least~~ thirty (30) days after notice of an adjudicatory proceeding~~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 made by first class mail. Service ~~and~~ is complete upon e-mailing or mailing. As per Rule 506.d~~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 Commission, Director, Administrative Law Judge, or Hearing Officer ~~or 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~~ waived at the discretion of the Commission.

d. If the application is contested, the Commission, Director, Administrative Law Judge, 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, Administrative Law Judge, or Hearing Officer.

ef. **Participation at the hearing.**~~:~~

(1) Adjudicatory hearings will be conducted in accordance with Rule 528. and any applicable prehearing orders of the Commission, Administrative Law Judge, 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 presiding trier of fact whether it be the Commission, Administrative Law Judge or 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, Administrative Law Judge, or Hearing Officer. ~~The Hearing Officer will ensure~~ Wwritten statements will beare provided to the Commission, Administrative Law Judge, or Hearing Officer, Applicant, Protestors, and Intervenors (if a docket number is specified in the statement). The Commission, Administrative Law Judge, or Hearing Officer 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.

Statements at hearing provide a means for interested persons to encourage the Commission, Administrative Law Judge, or Hearing Officer to consider such topics and issues that may not have been

sufficiently raised by the Parties. Statements that are general in nature, cumulative summaries, or specifically address consideration of an academic or policy concern, will be weighted accordingly. The trier of fact is the decision-maker regarding the appropriate weight of all evidence presenting, including public statements.

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 an Administrative Law Judge's or Hearing Officer's 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 before an Administrative Law Judge or Hearing Officer 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 thean application without a hearing.

b. Uncontested matters may be reviewed or heard administratively by an Administrative Law Judge or Hearing Officer and recommended for approval on the Commission's consent agenda. From time to time, uncontested applications recommended for approval by an Administrative Law Judge or 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 an Administrative Law Judge or 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 after notice of an adjudicatory proceeding ~~prior to the noticed hearing date~~. The Administrative Law Judge or Hearing Officer will determine if additional ~~information / e~~vidence is needed~~,~~ on a case-by-case basis. If the application lacks sufficient information or evidence ~~is not provided~~, the application may be continued ~~to the next hearing,~~ at the Administrative Law Judge or 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 an Administrative Law Judge or Hearing Officer);

(2) Sworn written testimony of relevant witnesses verifying land, geologic, ~~and~~ engineering, public health, safety, welfare, environment and wildlife 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 Administrative Law Judge or Hearing Officer, with findings of fact and conclusions of law related to land, geology, engineering, public health, safety, welfare, environment and wildlife 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 an Administrative Law Judge or 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, public health, safety, welfare, environment and wildlife, 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, Administrative Law Judge, or a Hearing Officer.

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

(2) No Commissioner, Administrative Law Judge, 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, Administrative Law Judge, 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, Administrative Law Judge, 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, Administrative Law Judge, 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 §24-18-108.5, C.R.S. ~~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, Administrative Law Judges, 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, Administrative Law Judge, or Hearing Officer has a personal or financial interest that prejudices that Commissioner's, Administrative Law Judge's, or Hearing Officer's ability to participate objectively in an official act.

(1) A Commissioner, Administrative Law Judge, 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 Administrative Law Judge or 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, Administrative Law Judge, 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, Administrative Law Judge, or Hearing Officer has a direct or substantial financial interest.

B. Whether the potential conflict will result in the Commissioner, Administrative Law Judge, 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, Administrative Law Judge, 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, Administrative Law Judge, 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, Secretary, Administrative Law Judge, ~~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 Co7mmission'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 Administrative Law Judge or Hearing Officer may otherwise direct on the record during prehearing proceedings or by written order.

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, Administrative Law Judge, or Hearing Officer to the extent practical, will observe and conform to the Colorado Rrules of Eevidence 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, Administrative Law Judge, or Hearing Officer may receive and consider evidence not admissible under the Rrules of eEvidence, 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, Administrative Law Judge, or Hearing Officer 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.~~

520. RESERVED

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.g.

c. Notice to a Complainant pursuant to Rule 522.b.(2) may be served by confirmed electronic mail ~~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 ~~when~~once sent. Where notice is sent by first class mail, notice is perfected five (5) 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 (5) 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, Form 18, will be given fourteen (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, Form 18 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 twenty-eight (28) days of receiving the Director's decision not to issue an NOAV or a final proposed AOC. Applications filed later than twenty-eight (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. An Administrative Law Judge or 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 seven (7) days following filing of the Petition.

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

E. The Petition for Review and all subsequent filings must be filed with the CommissionSecretary 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 will be heard at the next regularly scheduled hearing not less than thirty-five (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, Administrative Law Judge, or Hearing Officer 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, Administrative Law Judge, or Hearing Officer 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 deemeds just and reasonable.

(ii) If the Complainant fails to meet this burden, the Commission, Administrative Law Judge, or Hearing Officer will deny the Petition for Review, and if being heard by the . For a proceeding involving objections to a final proposed AOC, theCommission, 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, Administrative Law Judge's, or Hearing Officer's consideration of a Petition for Review will proceed as follows:

(i) Determination if any Commissioner, the Administrative Law Judge, or the Hearing Officer 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, Administrative Law Judge, or Hearing Officer 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 twenty-eight (28) days of the operator's receipt of an NOAV, unless an 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 twenty-eight (28) days, the Director may request the Commission, ~~-~~ Administrative Law Judge, or Hearing Officer ~~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 recommended approval by ~~the Commission~~ an Administrative Law Judge, or Hearing Officer unless no penalties are recommended.

B. A Complainant who has filed a written complaint on a ~~Form 18,~~ Complaint Report, Form 18, 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 fourteen (14) days to comment on the draft settlement terms before the AOC is finalized and presented to an Administrative Law Judge, or Hearing Officer ~~the Commission~~ for recommended 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~~AOCs that are not subject to a pending Complainant's Petition for Review will be reviewed by an Administrative Law Judge or Hearing Officer for recommended approval. A recommended AOC becomes the decision of the Commission within twenty (20) days after service upon the parties, or unless the Commission stays the recommended AOC within that time upon its own motion. ~~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 stays the recommended~~does not approve an~~ AOC, the Commission may

(i). ~~will~~ remand the matter to the Director for further proceedings; or

(ii). direct the parties to appear before the Commission for hearing.

(2) **Order Finding Violation.**

A. An enforcement action may not be resolved by the Director and must be heard by ~~the Commission~~ an Administrative Law Judge or Hearing Officer, unless the Commission directs otherwise, 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~~a 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 seven (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 Administrative Law Judge or Hearing Officer 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, Director, an Administrative Law Judge, or Hearing Officer ~~or the Director~~ may issue a Ceease and Ddesist Oerder 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 Ceease and Ddesist Oerder is entered by the Director, Administrative Law Judge, or Hearing Officer 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 Ceease and Ddesist Oerder will be served pursuant to Rule 521, within seven (7) days after it is issued.

(3) The Ceease and Ddesist Oerder 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, Administrative Law Judge, or Hearing Officer elects to require of the operator.

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

(5) If~~n the event~~ an operator fails to comply with a Ceease and Ddesist Oerder, 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~~a penalty will be assessed 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).

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		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, and welfare, including the environment and wildlife resources resulting from the violation. The Commission, Administrative Law Judge, or Hearing Officer will determine the degree of actual or threatened adverse impact to public health, safety, and welfare, including the environment and wildlife resources, based on the totality of circumstances in each case. The Commission, Administrative Law Judge, or Hearing Officer 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, Administrative Law Judge, or Hearing Officer 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, Administrative Law Judge, or Hearing Officer 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:

(i)~~1.~~ The violator acted with gross negligence or knowing and willful misconduct.

(ii)~~2.~~ The violation resulted in significant waste of oil and gas resources.

(iii)~~3.~~ The violation had a significant negative impact on correlative rights of other parties.

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

(v)~~5.~~ The violator falsified reports or records.

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

(vii)~~7.~~ The violator has engaged in a pattern of violations.

(viii)~~8.~~ The violation led to death or serious injury.

B. Mitigating factors:

(i)~~1.~~ The violator self-reported the violation.

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

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

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

(v)~~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.

(vi)~~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, an Administrative Law Judge, or Hearing Officer 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, ~~-~~ Administrative Law Judge, or Hearing Officer finds after hearing that an operator is responsible for the conduct described in subparagraph d.(1), the Commission, Administrative Law Judge, or Hearing Officer 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, which is ~~(~~not subject to judicial review,~~)~~ has been paid at which time the Commission may vacate the order.

(3) The Commission, Administrative Law Judge, or Hearing Officer 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, Administrative Law Judge, or Hearing Officer 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.(i~~4~~).

f. **Public Projects.** In its discretion, the Commission, Administrative Law Judge, or Hearing Officer 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 thirty (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, Administrative Law Judge, or Hearing Officer to determine responsible party status. In all other cases, the applicant will have the burden to present sufficient evidence to the Commission, Administrative Law Judge, or Hearing Officer 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 twenty-one (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, Director, Administrative Law Judge, or Hearing Officer ~~or Director~~ such information as the Commission, Director, Administrative Law Judge, or Hearing Officer ~~or Director~~ may reasonably require in making such determination.

d. The Commission, Administrative Law Judge, or Hearing Officer 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 ~~o~~Order ~~F~~finding ~~v~~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 ~~C~~cease and ~~D~~desist ~~O~~order issued by ~~the Director or~~ the Commission or the Director 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 Administrative Law Judge or 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 Administrative Law Judges or 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 Administrative Law Judge or Hearing Officer will make a decision concerning approval or denial of the application and so inform the applicant. The Administrative Law Judge or 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 Administrative Law Judge or 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 Administrative Law Judges, or 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 Administrative Law Judges or 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, an Administrative Law Judge, or Hearing Officer 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, Administrative Law Judge, or Hearing Officer will preside over any prehearing conference and rule on preliminary matters in any pending proceeding ~~pending before the Commission~~.

c. The Secretary, Administrative Law Judge, 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, Administrative Law Judge, 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 Administrative Law Judge or Hearing Officer will reduce to writing any agreement reached or orders issued at a prehearing conference. The Administrative Law Judge or 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 Administrative Law Judge or 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 Commission, Administrative Law Judge, or Hearing Officer ~~or the Commission~~:

(1) Determination of whether any Commission members, the Administrative Law Judge, or Hearing Officer ~~or any Commission members~~ have a conflict of interest;

(2) If before the Commission, p~~P~~resentation of any prehearing order;

(3) If before the Commission, p~~P~~resentation of any motions and disposition of procedural matters;

(4) If before the Commission, p~~P~~resentation 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, Administrative Law Judge, or Hearing Officer;

(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 or Administrative Law Judge 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 Commission, Administrative Law Judge, or 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 or Administrative Law Judge ~~*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 Commission, Administrative Law Judge, or Hearing Officer ~~or the Commission~~:

(1) Determination of whether any Commission members, the Administrative Law Judge, or Hearing Officer 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, Administrative Law Judge, or Hearing Officer 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, Administrative Law Judge, or Hearing Officer.

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. If the hearing is before an Administrative Law Judge or Hearing Officer, the Administrative Law Judge or Hearing Officer may ask questions during or after witness testimony or, cross-examine the witness.

f. **Limitations of testimony.** Where two or more protestants or intervenors have substantially similar interests and positions, the Commission, Administrative Law Judge, or Hearing Officer 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, including at the request of the Director.

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 twenty-one (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 rules.

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 rules.

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 who owns, or has secured the consent of the owners of, more than forty-five (45) percent of the mineral interests to be pooled 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.

b. The Commission must receive evidence that owners were tendered a good faith, 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 good faith, 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.

cb. Upon a showing by the applicant that its 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 a good faith~~n~~ offer to lease and given at least sixty (60) days to review the offer, the unleased owner has failed to accept or refused a reasonable offer to lease. In determining whether a good faith, 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.

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

e~~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.

5203~~2~~1. ~~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 may~~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.

532. DECISIONS, ORDERS AND EXCEPTIONS

a. **Interim Decisions.**

(1) Interim decisions are issued after an application is set for hearing, and are other than a decision that may become a final decision of the Commission.

(2) Interim decisions shall not be subject to exceptions. However, any aggrieved party or rulemaking participant may challenge the matters determined in an interim decision in exceptions to a recommended order.

(3) Nothing in this rule prohibits a motion for clarification of an interim decision set forth in an interim decision.

b. **Recommended Orders.** After due consideration of written statements, oral statements, the testimony, the evidence, and the arguments presented at hearing, the Administrative Law Judge will make a recommended order based upon evidence in the record, consistent with the Act and any rule, permit, or order made pursuant thereto. The Administrative Law Judge or Hearing Officer will promptly transmit to the Commission and the parties the record and exhibits of the proceeding and a written recommended order. The recommended order becomes a final agency action if no exceptions are filed within twenty (20) days after service upon the parties.

c. **Exceptions.** A recommended order becomes the Commission's final order unless, within twenty (20) days or such additional time as the Commission may allow, any party files exceptions to the recommended order or the Commission orders the recommended order to be stayed. A stay of a recommended order does not automatically extend the period for filing exceptions or a motion for an extension of time to file exceptions. If exceptions are timely filed, the recommended order is stayed until the Commission rules upon them. Parties may file responses to exceptions within fourteen (14) days following service of the exceptions.

(1) A party wishing to file exceptions may shall request a transcript within seven (7) days of the date of the recommended order. The requesting party shall bear the cost of the preparation of the transcript.

(2) The Commission will conduct a review upon the same record before the Administrative Law Judge, and a de novo review of the law.

(3) The Commission may, upon its own motion or upon the motion of a party, order oral argument regarding exceptions. The Secretary shall set the time allotted for argument. The Commission may terminate argument whenever, in its judgment, further argument is unnecessary. The party filing exceptions is entitled to open and conclude the argument. Arguments will be limited to issues raised in the exceptions, unless the Commission orders otherwise.

d. An Administrative Law Judge's or Hearing Officer's recommended order shall be an initial decision for purposes of filing an exception pursuant to the state Administrative Procedures Act.

533. Commission Findings and Order

a. After due consideration of written statements, ~~and~~ oral statements, the testimony, and the arguments presented at hearing before the full Commission, 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.

b. 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.

c. Orders will be final upon Commission approval, and effective for purposes of judicial review on the date of electronic delivery or mailing. Commission approval occurs twenty (20) days after the recommended order is served upon the parties, or when the Commission issues its order.

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