

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

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

ALLIED LOCAL GOVERNMENTS’ RESPONSE TO PRE-HEARING STATEMENTS

The undersigned local governments, Boulder County, the City of Lafayette, the City and County of Broomfield and the Town of Erie, participating together as the Allied Local Governments (“ALG”), respectfully submit this Response to Pre-Hearing Statements.

The ALG divides its responses to the pre-hearing statements of the other parties to this rule-making into three categories: (i) items the ALG supports; (ii) items the ALG opposes; and (iii) items raised by other parties that require clarification.

The ALG will present witnesses and arguments in support of its positions at the hearing in this matter and requests 45 minutes in which to do so.

I. Items the ALG Supports

The ALG supports the changes to Rule 530 proposed by the City of Boulder. The well-reasoned proposals help to make the involuntary pooling process more transparent and more just.

The ALG supports the majority of the proposals put forward by Adams County. Areas where Adams County took different approaches than the ALG to specific rule sections are discussed in Section III below.

The ALG supports the revisions to Rule 530.a, 530.b and the addition of 530.e suggested by Incline Niobrara Partners providing that owners in involuntary pooling procedures be provided (i) complete documentation explaining their mineral interest ownership in the proposed pool; and (ii) written estimates of their estimated share of drilling and completion costs. This proposal fits with two important ALG goals: improving the competency and sufficiency of evidence provided by applicants at all levels of Commission proceedings, and improving transparency and access for all participants in Commission matters.

The ALG agrees with the Colorado Alliance of Mineral Resource Owners that clarification is required around Rule 510 statements due to the elimination of 509.c. Rule 510 needs to be crystal clear that it still applies to adjudicatory proceedings and staff needs to provide assurances that this was their intention. The 510 statement is a critical device for public input,

and is an important alternative to appearing in person at a public comment period, which is often not possible for members of the public. It must not be limited.

The ALG supports LOGIC's recommendation to strike the proposed changes to Rule 522.c(3)B. An enforcement action seeking penalties should be mandatory when an operator fails to return to compliance after a violation. Such repeated failure should not escape consequence.

II. Items the ALG Opposes

The ALG opposes the revisions to Rule 530 proposed by COGA and the Jost Energy Law Operator Group (the "JEL Group") stating that working owners be provided 35 days to elect whether to consent to pooling, while unleased owners get 60 days. "Working owner" is not defined in the 100 or 500 series rules and should not be used as a classification with significant repercussions. Second, however defined, working owners are not necessarily a homogenous group and may have differing levels of resources, time, and expertise for reviewing a lease offer. Moreover, working owners' business calculations in making an election are complex and may require significant consultation. Finally, in many cases the shorter notice period will not affect the overall length of the pooling proceeding because unleased owners in the same pool will still have 60 days. The ALG's primary goals are fairness and transparency in the process and this suggested change cuts against both of those aims.

The ALG opposes the JEL Group's addition of "harassment" to the enumerated types of abuse of process in Rule 501.b. Harassment is too vague and too subjective a concept to form the basis on which a party might be summarily dismissed or otherwise penalized during a proceeding.

The ALG vigorously opposes the proposal of the JEL Group that local governments be denied intervention as of right for "downhole issues like pooling and spacing." In testimony at a recent drilling and spacing unit application hearing, operator 8 North LLC made clear that drilling and spacing units are not determined strictly with respect to downhole considerations. 8 North's landman, geologist and engineer all testified that proposed DSUs are designed with reference to likely surface sites. With such sites in mind, operators determine the most efficient way to drain the bulk of their mineral holdings in an area surrounding those surface sites, given the length of horizontal bore they intend to drill. Thus, drilling and spacing is not a purely "downhole" issue but in practice depends entirely on surface considerations. In fact, even after the amendments made by S.B. 18-230, § 34-60-116(5), C.R.S. only allows for drilling in a unit in the location "authorized by the [spacing] order," even though the Commission has not traditionally applied that provision. Maintaining a bright line separation between the establishment of DSUs and other processes serves only to confuse parties, is out of step with the realities of DSU planning, is unnecessarily clumsy, and gets in the way of comprehensive planning. Although it is beyond the scope of this rule-making, the ALG favors an overhaul of this system so that these issues can be collapsed into single proceedings that consider all relevant

issues in a comprehensive way. Nonetheless, as the process stands now, local governments should not be kept out of drilling and spacing proceedings or, particularly if local government interests such as mineral ownership are directly affected, pooling proceedings.

III. Items Requiring Clarification or Elaboration

1. *Definition of Material Change*

Several industry parties requested or suggested clarification for the term “material change” as it would require the filing of amended applications. PDC proposed language including a statement that a material change would not include a reduction in the number of wells proposed for a site. The ALG does not oppose that concept, but would add that any definition of material change should include any change that increases the impacts of development, specifically including an increase in the number of wells or any change in their configuration.

2. *Intervention and Protest*

In their pre-hearing statements, API and Extraction Oil & Gas discuss the relationship of the Rule 100 definition of “protestant” to Rule 509.a. These comments highlight continuing confusion in the way 509.a is structured and the ALG would like to further amend its original proposed redlines to that section. From a broader point of view, the ALG argues that Rule 509 could best be improved by abandoning the definitions of intervenor and protestant in favor of a single term such as “participant,” and clarifying that participation can be as of right for certain agencies or parties, by permission to protect legal interests, or by permission to serve the public interest. Nonetheless, short of such an overhaul, the ALG has additional recommendations to make the procedural distinction between “intervention” and “protest” exceedingly clear in this rather difficult rule. Below is pasted the ALG’s first proposed redline (changes showing in red) with additional changes in red that are also highlighted in yellow.

509. PROTESTS/INTERVENTIONS/PARTICIPATION IN ADJUDICATORY PROCEEDINGS

- a. The applicant and persons ~~that who~~ have filed with the Commission a timely and proper protest or intervention pursuant to this rule ~~shall~~will have the right to participate formally in any adjudicatory proceeding. ~~Intervention shall be granted by right and without fee 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 Parks and Wildlife solely to raise concerns about adverse impacts to wildlife resources. Those who are interested parties, including those parties listed in 509.a(2)B, or who can prove a legal interest under the Act will be considered protestants. Those who are listed in 502.a(B) and those who are not interested parties, but who can demonstrate to the Commission's satisfaction that their participation would serve the public interest will be considered interveners.~~
- (1) Subject to the provisions of Rule 506.c or as otherwise stated in a Notice of Hearing, ~~T~~he protest or intervention ~~shall~~will be filed with the Secretary, and served on the applicant and its counsel at least ~~14 days~~thirty (30) days prior to the noticed hearing date.

(2) Description of affected interest:

- A. A protest ~~shall~~will include information to demonstrate that the person is a protestant under these rules in order for the protest to be accepted by the Commission. If determined by the Hearing Officer that a person is not a protestant, any statement provided will be considered a written comment submitted pursuant to Rule 510.
- B. Intervention will be granted by right and without fee to the relevantan affected 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. Such a party shall submit a pleading including:
- (i) a description of its concerns as enumerated above;
 - (ii) a description of the intended presentation including a list of proposed witnesses;
 - (iii) a time estimate to hear the protest; and
 - (iii) 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. A local government, the Colorado Department of Public Health and Environment, or the Colorado Parks and Wildlife intervening as a matter of right shall include in the intervention information describing concerns relating to the public health, safety and welfare, including the environment and wildlife resources, raised by the application. When an intervention is filed by any local government, the Colorado Department of Public Health and Environment, the Colorado Parks and Wildlife, or any person on an application subject to Rule 508.a, if such an intervention is filed, information on the following shallwill be included:
 - i. 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; and
 - ii. That the potential impacts were not adequately addressed by the application or by the Proposed Plan; and
 - iii. That the potential impacts are not adequately addressed by the rules and regulations of the Commission.
- C. A party desiring to intervene by permission of the Commission ~~shall~~will include in the intervention pleading information to demonstrate why the intervention will serve the public interest, in which case granting the intervention ~~shall~~will be at the Commission's sole discretion. The ~~Commission~~Director, at its discretion, may limit the scope of the permissive interven~~ee~~er's participation at the hearing.

~~(3) D.~~ The In addition to the requirements set forth above, a pleading requesting intervention or protest by Commission permission ~~protest or intervention pleading shall~~will also include:

- A. (i) A general statement of the factual or legal basis for the protest or intervention;

(ii)

~~B.~~ The relief requested;

~~C.~~(iii) A description of the intended presentation including a list of proposed witnesses;

~~D.~~(iv) A time estimate to hear the protest or intervention; and

~~E.~~(v) A certificate of service attesting that the pleading has been served, ~~at least 14 business days prior to the first hearing date on the matter,~~ on the applicant and any other party which has filed a protest or intervention in the proceeding. ~~If the pleading is served by mail the party filing the pleading shall provide an electronic or a facsimile copy of the pleading to the applicant and other persons who have filed a proper protest or intervention in the matter on or before the final date for protest or intervention. If for any reason the party filing the pleading is not able to furnish a copy of the pleading to the applicant and the other persons who have filed a proper protest or intervention on or before the final date for protest or intervention, the party filing the pleading shall so notify the Secretary, the applicant and the other parties to the proceeding.~~

3. *Differences in Approach from Adams County*

Adams County and the ALG are well-aligned in their overall goals for this rulemaking and improvements to Commission processes. The two parties took slightly different approaches to specific rules in their pre-hearing statements, on two matters in particular: (i) Rule 506.c and the deadlines to file protests or interventions when hearings are continued; and (ii) the applicability of Rule 508 to particular applications.

As to protest deadlines when hearings are continued, the ALG and Adams County both seek clarity and fairness. Adams County proposes that protest and intervention deadlines be continued corresponding to any continuance of the relevant hearing date. The ALG supports that proposal and believes it would keep open the opportunity for any eligible party to participate in a hearing. However, if the Commission is not willing to make that change, the ALG's proposal to ensure that the rules and form notices of hearing cross-reference each other is necessary to eliminate any doubt as to deadlines.

As to the applicability of Rule 508, both parties seek to align the rule with the reality of modern oil and gas development and the need for robust public outreach from both operators and the Commission. Eliminating the rule's applicability for one multi-well site in 40 acres ignores the modern reality that such a site could contain 50 or more wells. There are a number of ways these goals can be met, including by changing the density threshold as the ALG recommends and by opening the issue to Commission discretion as Adams County has recommended. The ALG prefers Commission discretion to have clear and predictable boundaries, but the goal remains the same: public forums should be available wherever dense, impactful development poses significant concerns for local residents.

RESPECTFULLY SUBMITTED this 31st day of August 2018.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **AFFILIATED LOCAL GOVERNMENTS' RESPONSE TO PRE-HEARING STATEMENTS** was served electronically, this 31st day of August 2018, to the following:

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