

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

IN THE MATTER OF THE APPLICATION BY)	CAUSE NO. 1
EVERGREEN NATURAL RESOURCES FOR A RULE)	
502 VARIANCE FROM RULE 1004.C RECLAMATION)	DOCKET NO. 210400057
REQUIREMENTS FOR THE JULIEANNA 42-22 WELL,)	
LOCATED IN SECTION 22, TOWNSHIP 32 SOUTH,)	TYPE: VARIANCE
RANGE 65 WEST, 6 TH P.M., PURGATOIRE RIVER)	
FIELD, LAS ANIMAS COUNTY, COLORADO)	ORDER NO. 1-298

REPORT OF THE COMMISSION

The Commission heard this matter on March 22, 2023, at the Colorado Oil and Gas Conservation Commission, 1120 Lincoln St., Suite 801, Denver, Colorado, upon application for an order approving a Rule 502 variance from the final reclamation requirements of Rule 1004.c for the Julieanna 42-22 Well (API No. 05-071-06721) (Location ID 307646) (the "Julieanna Well Site") located in the below-described lands ("Application Lands"):

Township 32 South, Range 65 West, 6th P.M.
Section 22: SE $\frac{1}{4}$ NE $\frac{1}{4}$

FINDINGS

The Commission finds as follows:

1. Evergreen Natural Resources LLC (Operator No. 10705) ("ENR" or "Applicant"), as applicant herein, is an interested party in the subject matter of the above-referenced proceeding.
2. Due notice of the time, place, and purpose of the proceeding has been given in all respects as required bylaw.
3. The Commission has jurisdiction over the subject matter embraced in said notice, and of the parties interested therein, and jurisdiction to promulgate the hereinafter prescribed order pursuant to the Colorado Oil and Gas Conservation Act.
4. Pursuant to C.R.S. § 34-60-106(12), the Commission promulgated its 1000-Series Rules to govern reclamation of the land and soil affected by oil and gas operations. See Rule 1001.a. Generally, the Commission's reclamation regulations require the surface of land affected by oil and gas operations to "be restored as nearly as practicable to its condition at the commencement of drilling operations." *Id.*
5. Rule 1004 addresses final reclamation of well sites and associated production facilities. Rule 1004.a provides that "[a]ll access roads to plugged and abandoned wells and associated production facilities shall be closed, graded and recontoured. Culverts and any other obstructions that were part of the access road(s) shall be removed. Well locations, access roads and associated facilities shall be reclaimed."
6. Rule 1001.c provides that the Commission "shall not require compliance with" the reclamation requirements of Rule 1004 (except Rules 1004.c.(4) and 1004.c.(5)) "if the operator

can demonstrate . . . both that compliance with such rules is not necessary to protect the public health, safety and welfare, including prevention of significant adverse environmental impacts, and that the operator has entered into an agreement with the surface owner regarding topsoil protection and reclamation of the land.” Prior to final reclamation approval, the operator “shall either comply with the rules or obtain a variance.” Rule 1001.c.

7. Rule 502.a provides that “[r]equests for variances to any of the Commission’s Rules or orders will be filed with the Commission.”

8. Rule 502.b provides that variances from the ministerial application of Commission Rules or orders may be recommended for approval by the Director; however, if such variance request is not ministerial or implicates matters of public health, safety, and welfare, the environment or wildlife resources, the Director will refer the application to the Commission for hearing.

9. Rule 502.c provides that an applicant requesting a variance from the Commission pursuant to Rule 502.a must show:

- A. It has made a good faith effort to comply, or is unable to comply, with the specific requirements contained in the Commission’s Rule or order from which it seeks a variance, including, without limitation, securing a waiver or an exception, if any;
- B. That the requested variance will not violate the basic intent of the Act;
- C. The requested variance is necessary to avoid an undue hardship;
- D. Granting the variance will result in no net adverse impact to public health, safety, welfare, the environment, or wildlife resources; and
- E. The requested variance contains reasonable conditions of approval or other mitigation measures to avoid, minimize, or mitigate adverse impacts to public health, safety, welfare, the environment, and wildlife resources.

10. On October 14, 2021, amended November 16, 2021, and again on August 19, 2022, ENR, through counsel, filed a verified application (“Application”) pursuant to Rule 503.g.(9) for a variance from the final reclamation requirements of Rule 1004.c for access points and roads, including roads that predate oil and gas development, and other small discrete improvements that the surface owner wishes to retain at the Julieanna Well Site.

11. On November 23, 2021, the Colorado Oil and Gas Conservation Commission (“COGCC”) Permitting Group provided its review of the Application, stating that the Permitting Group “has no concerns with this application.”

12. On November 28, 2022, Director Murphy submitted her recommendation on the Application. Director Murphy recommended approval of the variance; however, the Director determined that the variance was not “ministerial in nature, in that it results in a potentially permanent impact that will have to be managed by the landowner and administered by the local relevant government.” Nonetheless, the Director recommended approval of the Application.

13. The Commission has not received any petitions pursuant to Rule 507. Therefore,

the Application is uncontested.

14. The Application requests a variance from the final reclamation requirements of Rule 1004.a for access points, roads, and other small discrete improvements that the surface owner wants to retain at the Subject Well Site. ENR and the surface owner for the Julieanna Well Site have entered into a final reclamation agreement, which waives the Rule 1004 final reclamation requirements ("Surface Owner Waivers"). These reclamation requirements are not necessary to protect public health, safety, welfare, or the environment. Under these circumstances, Rule 1001.c provides that "[t]he Commission shall not require [further] compliance with . . . Rule 1004."

15. ENR conducted a Final Reclamation Consultation on the Subject Well Site with the landowner and performed the following reclamation work on the Subject Well Site: Cut slope where the well pad was graded to achieve slope stabilization; The slope was cross-rippled and seeded to establish slope stabilization; Stormwater BMPs were constructed and maintained to achieve site stabilization and drainage features constructed; The surface owner requested a specific seed mix that was used by Applicant to seed the well pad; Applicant continues to inspect the location annually, maintain stormwater BMPs as needed and treat for noxious weeds until final reclamation is met according to Commission standards. ENR restored as closely as possible the Subject Well Site to its pre-development condition, while also respecting the surface owner's requests.

16. The well pad footprint was reduced from 0.6 acres to approximately 0.2 acres after P&A Operations. The flat portion of the well pad adds value to the property and will be utilized by the landowner to access the property and other purposes related to ownership and/or development of the property. Finally, the landowner will comply with all local, state, and federal regulations regarding future development of the Subject Well Site.

17. ENR's requested variance from the final reclamation requirements respects the Landowner's express wishes; this includes an offsite pit being left for agricultural usage. The variance applies to very small areas of land and is limited in nature and scope.

18. Based on the Application, Surface Owner Waivers, and other written filings, the Commission concludes the Application satisfies the requirements of Rule 502.c. because:

A. ENR has made a good faith effort to comply with Rule 1004 at the Subject Well Site. See Rule 502.c.(1). The Subject Well Site is plugged and abandoned, and ENR has completed a majority of the reclamation requirements to restore the land to its pre-development condition consistent with landowner consent, including removing all associated production facilities and equipment and revegetating disturbed areas. ENR and the surface owner entered into Surface Owner Waivers for the access points, roads, and small improvements the surface owner wants to retain. Upon 2022 inspections, it has been determined that the following work is still necessary on the Subject Well Site in order to complete all of the reclamation requirements:

- Reseeding all cut slopes around pit, approximately 0.4 acres, to reach 70% vegetation requirements; and
- Fixing rill erosion occurring on the west cut slope of the pit.

- B. ENR's requested variance will not violate the intent of the Oil and Gas Conservation Act. See Rule 502.c.(2). Because the variance is limited in scope to the areas necessary to align with landowner consent, it is consistent with the Act's direction to "protect and minimize adverse impacts" to public health, safety, welfare, the environment, and wildlife resources. In addition, deference to the surface owner's wishes regarding continued use of their property is consistent with multiple provisions of the Act recognizing the significant role the surface owner should play regarding the reclamation of and operations on his or her land. See, e.g., C.R.S. § 34-60-106(3.5) (directing that land restoration occur "in accordance with the owner of the surface of the lands"); C.R.S. § 34-60-127(1)(a) (requiring that oil and gas operations "accommodate[] the surface owner").
 - C. The variance is necessary to avoid undue hardship, both for ENR and the landowner. See Rule 502.c.(3). First, without the landowner's consent, it would be impossible for ENR to legally access the portion of the surface to complete reclamation activities. In addition, the flat portion of the well pad adds value to the property and will be utilized by the landowner to access the property and other purposes related to ownership and/or development of the property. Landowner also requested an offsite pit remain for future use as a stock pond and for stormwater runoff. Further, the surface owner intends to use the access road for future vehicle access to the property. This variance allows the surface owner to continue using the property without reconstructing access points, roads, and other existing improvements.
 - D. The variance will not result in a "net adverse impact to public health, safety, welfare, the environment, or wildlife resources." See Rule 502.c.(4). Despite the fact the land subject to the variance is located in High Priority Habitat, the variance is limited in nature and scope, and avoids further surface disturbance required to reconstruct access points, roads, or other necessary improvements.
 - E. The variance contains "reasonable conditions of approval or other mitigation measures to avoid, minimize, or mitigate adverse impacts to public health, safety, welfare, the environment, and wildlife resources." See Rule 502.c.(5). ENR and surface owner will consider the value of following Colorado Parks and Wildlife best management practices associated with the various High Priority Habitats impacted by the Subject Well Site. See Director's Recommendation. Further, the requirement below that ENR submit a Form 4 documenting the variance relief constitutes a "reasonable condition of approval" as COGCC reviews and approves Form 4s it receives.
19. ENR agrees to be bound by oral order of the Commission.
20. Based on the facts stated in the verified Application, Surface Owner Waivers, and other materials submitted by ENR, and no petitions having been received, the Commission finds that ENR has satisfied Rule 502.c and that the requested variance to Rule 1004 is warranted for the Julieanna Well Site.

ORDER

NOW, THEREFORE, IT IS ORDERED, that:

1. The Application for Rule 502 variance from the final reclamation requirements of Rule 1004.c for access points and roads, including roads that predate oil and gas development, and other small discrete improvements that the surface owner wants to retain at the Julieanna Well Site in Las Animas County, Colorado is GRANTED.

2. The provisions contained in this Order shall become effective immediately.

3. Within 30 days of this Order, Applicant will submit a Form 4, Sundry (Form 4) documenting the variance relief to Location ID 307646. The Form 4 will include the Order number, all Rules from which relief was granted, and a summary of the relief granted.

4. The Commission expressly reserves its right, after notice and hearing, to alter, amend or repeal any and/or all of the above orders.

5. Under the State Administrative Procedure Act, the Commission considers this Order to be final agency action for purposes of judicial review within 35 days after the date this Order is mailed by the Commission.

6. An application for reconsideration by the Commission of this Order is not required prior to the filing for judicial review.

ENTERED this 5th day of April, 2023 as of March 22, 2023.

OIL AND GAS CONSERVATION COMMISSION OF
THE STATE OF COLORADO

By _____

Mimi C. Larsen, Commission Secretary