

BEFORE THE ENERGY AND CARBON MANAGEMENT COMMISSION
OF THE STATE OF COLORADO

IN THE MATTER OF THE APPLICATION BY) CAUSE NO. 1
CAERUS PICEANCE LLC, FOR A RULE 502.B)
VARIANCE FROM RULE 1004.A AND 1004.D) DOCKET NO. 230300098
RECLAMATION REQUIREMENTS FOR THE)
ZAHM-610S96W/29SENE LOCATION, PLATEAU) TYPE: VARIANCE
FIELD, MESA COUNTY, COLORADO)
) ORDER NO. 1-346

REPORT OF THE COMMISSION

The Commission heard this matter on February 21, 2024, at the Colorado Energy and Carbo Management Commission, 1120 Lincoln Street, Ste. 801, Denver, Colorado 80203, upon application for an order to approve a Rule 502.b variance from final reclamation requirements under Rule 1004.a and 1004.d for the ZAHM-610S96W/29SENE Location (Location ID 391243) located in Mesa County, Colorado (the “ZAHM Location”):

Township 10 South, Range 96 West, 6th P.M.
Section 29: SE $\frac{1}{4}$ NE $\frac{1}{4}$

FINDINGS

The Commission finds as follows:

1. Caerus Piceance LLC (Operator No. 10456) (“Applicant” or “Caerus”), as Applicant herein, is an interested party in the subject matter of the above-referenced hearing.
2. Due notice of the time, place and purpose of the hearing has been given in all respects as required by law.
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 Oil and Gas Conservation Act.
4. Pursuant to C.R.S. § 34-60-106(2.5)(a), the Commission shall regulate oil and gas operations in a reasonable manner to protect and minimize adverse impacts to public health, safety, and welfare, the environment, and wildlife resources, and shall protect against adverse environmental impacts on any air, water, soil, or biological resource resulting from oil and gas operations.
5. Rule 502.a provides that requests for variances to any of the Commission’s Rules or orders will be filed with the Commission.
6. Rule 502.b provides that variances from the ministerial application of Commission Rules or orders may be granted by the Director, however, if such variance request implicates matters of public health, safety, and welfare, the environment or wildlife resources, the Director will refer the application to the Commission for hearing.

7. A Rule 502.b variance requires the applicant to demonstrate that:
- (1) 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;
 - (2) That the requested variance will not violate the basic intent of the Act;
 - (3) The requested variance is necessary to avoid an undue hardship;
 - (4) Granting the variance will result in no net adverse impact to public health, safety, welfare, the environment, or wildlife resources; and
 - (5) 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.

8. Rule 1001.c provides, in relevant part, that:

the Commission shall not require compliance with . . . Rule 1004 (except Rules 1004.c.(4) and 1004.c.(5) for which compliance will continue to be required), if the operator can demonstrate to the Director's or the Commission's satisfaction that compliance with such rules is not necessary to protect public health, safety and welfare, including prevention of significant adverse environmental impacts and that operator has entered into an agreement with the surface owner regarding topsoil protection and reclamation of the land.

9. Rule 1004.a provides:

Well sites and associated production facilities. Upon the plugging and abandonment of a well, all pits, mouse and rat holes and cellars shall be backfilled. All debris, abandoned gathering line risers and flowline risers, and surface equipment shall be removed within three (3) months of plugging a well. All 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. As applicable, compaction alleviation, restoration, and revegetation of well sites, associated production facilities, and access roads shall be performed to the same standards as established for interim reclamation under Rule 1003. All other equipment, supplies, weeds, rubbish, and other waste material shall be removed. The burning or burial of such material on the premises shall be performed in accordance with applicable local, state, or federal solid waste disposal regulations and in accordance with the 900-Series Rules. In addition, material may be burned or buried on the premises only with the prior written consent of the surface owner. All such reclamation work shall be completed within three (3) months on crop land and twelve (12) months on non-crop land after plugging a well or final closure of associated production facilities.

The Director may grant an extension where unusual circumstances are encountered, but every reasonable effort shall be made to complete reclamation before the next local growing season.

10. Rule 1004.d provides:

[f]inal reclamation of all disturbed areas shall be considered complete when all activities disturbing the ground have been completed, and all disturbed areas have been either built upon, compacted, covered, paved, or otherwise stabilized in such a way as to minimize erosion, or a uniform vegetative cover has been established that reflects predisturbance or reference area forbs, shrubs, and grasses with total percent plant cover of at least eighty percent (80%) of pre-disturbance or reference area levels, excluding noxious weeds, or equivalent permanent, physical erosion reduction methods have been employed. Re-seeding alone is not sufficient.

11. On March 29, 2023, by its attorneys, Caerus filed with the Commission a verified application (“Application”) pursuant to Rule 503.g.(9) for an order approving a Rule 502.b variance from final reclamation requirements of Rule 1004.a and 1004.d for the ZAHM Location, located in Mesa County, Colorado.

12. On February 9, 2024, 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 local relevant government.” Accordingly, a hearing before the ECMC was held.

13. The Commission has not received any petitions pursuant to Rule 507. Therefore, the Application is uncontested.

14. Based on the Application, Final Reclamation Waiver Agreement, and other written filings, the Commission concludes the Application satisfies the requirements of Rule 502.c. because:

- A. Caerus has made a good faith effort to comply with Rule 1004.a and 1004.d at the ZAHM Location. See Rule 502.c.(1). On July 16, 2020, in accordance with Rules 306.a and 306.f, in effect at the time, Caerus conducted an on-site review with the Surface Owners of the planned reclamation for the Location and access road and turn-around. The Surface Owners directed that the access road and turn-around be left in a stabilized and compacted condition and graveled to allow the Surface Owners access for agricultural operations and new home construction. Aside from the access road, Caerus alleviated, recontoured, and reseeded the Location and other disturbed areas to stabilize and revegetate the reclamation areas to approximate the pre-disturbance landform.
- B. Caerus’s requested variance will not violate the basic intent of the Oil and Gas Conservation Act. See Rule 502.c.(2). 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” in conducting oil and gas operations). Here, the requested variance is in accordance with the request of the Surface Owners and will not result in any net adverse impacts to public health, safety, welfare, the environment, or wildlife resources.

- C. The variance is necessary to avoid undue hardship. See Rule 502.c.(3). Requiring Caerus to recontour and fully reclaim the access road and turn-around would contravene the express terms of the Final Reclamation Agreement with the Surface Owners, and will deprive the Surface Owners of the use of their property in the manner and condition that they so desire.
- 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). Caerus conducted an Operator’s Analysis of the impacts associated with the variance and determined that granting the variance will not result in any adverse impacts to public health, safety, welfare, the environment, or wildlife resources. All equipment, trash, and debris has been removed from the ZAHM Location, the existing disturbance stabilized, and Stormwater protections have been implemented in the form of desirable vegetation and equivalent permanent stabilization methods per the Surface Owners’ direction.
- E. The variance does not require additional reasonable conditions of approval and mitigation measures to avoid, minimize, or mitigate adverse impacts to public health, safety, welfare, the environment, and wildlife resources. See Rule 502.c.(5). The ZAHM Location has been alleviated of compaction, recontoured, and reseeded to stabilize slopes and revegetate the reclamation areas. The remaining unreclaimed access road and turn-around have not been recontoured or alleviated of compaction, but has been graded, compacted, and stabilized to allow Surface Owners continued access for agricultural operations and new home construction. Further, Caerus has continued to monitor and control stormwater and noxious weeds and, as provided in the Final Reclamation Agreement, has agreed to continue such efforts until bond release.

15. Granting the Application is consistent with the protection of public health, safety, welfare, the environment, and wildlife resources.

16. Caerus agrees to be bound by oral order of the Commission.

17. Based on the facts stated in the verified Application, the Rule 505 testimony, and no petitions having been received, the Commission finds that Caerus has satisfied Rule 502.c and that, pursuant to Rule 502.b, a variance excusing Caerus from further compliance with Rules 1004.a and 1004.d is warranted for the ZAHM Location.

ORDER

IT IS HEREBY ORDERED:

1. The Application for a Rule 502.b. variance from final reclamation requirements under Rule 1004.a. and 1004.d. for the ZAHM-610S96W/29SENE Location (Location ID 391243) within the Application Lands is approved.
2. The provisions contained in the above order shall become effective immediately.
3. Within 30 days of this Order, Applicant will submit a Form 4 documenting the variance relief to Location ID: 391243. 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 23rd day of February, 2024, as of February 21, 2024.

ENERGY AND CARBON MANAGEMENT COMMISSION
OF THE STATE OF COLORADO

By  _____
Jon Peskin, Acting Commission Secretary