

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

IN THE MATTER OF THE PROMULGATION AND)	CAUSE NO. 1
ESTABLISHMENT OF FIELD RULES TO)	
GOVERN OPERATIONS FOR THE DAKOTA AND)	DOCKET NO. 230300097
CORCORAN FORMATIONS, SHIRE GULCH)	
FIELD, MESA COUNTY, COLORADO)	TYPE: VARIANCE
)	
)	ORDER NO. 1-351

REPORT OF THE COMMISSION

The Commission heard this matter on April 10, 2024, at the Colorado Energy and Carbon Management Commission, 1120 Lincoln St, Ste. 801, Denver, CO 80203, upon application for an order to approve a Rule 502.b. variance from final reclamation requirements under Rule 1004 for the Prather-69S97W/5SESE Location (Loc. ID. 312527) located in Mesa County, Colorado:

Township 9 South, Range 97 West, 6th P.M.
Section 5: SE¼SE¼

FINDINGS

The Commission finds as follows:

1. Caerus Piceance LLC ("Applicant" or "Caerus"), Operator No. 10456, 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 Prather-69S97W/5SESE Location (Loc. ID. 312527) located in Mesa County, Colorado.

12. Testimony and exhibits submitted in support of the Application showed that Caerus has satisfied Rule 502.c.(1) – (5): it has made a good faith effort to comply, or is unable to comply, with the specific requirements contained in Rules 1004.a. and 1004.d.; the requested variance will not violate the basic intent of the Act; the requested variance is necessary to avoid an undue hardship; granting the variance will result in no net adverse impact to public health, safety, welfare, the environment, or wildlife resources; and 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.

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

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

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

16. 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 proper.

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 Prather-69S97W/5SESE Location (Loc. ID. 312527) within the Application Lands is approved.

IT IS FURTHER ORDERED:

1. The provisions contained in the above order shall become effective immediately.

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

3. 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.

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

ENTERED this 10th day of April, 2024, as of April 10, 2024.

ENERGY AND CARBON MANAGEMENT COMMISSION
OF THE STATE OF COLORADO

By 
Elias Thomas, Commission Secretary