

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 THE FINAL RECLAMATION ) DOCKET NO. 230300099  
REQUIREMENTS OF RULE 1004.A AND 1004.D., )  
ROLLINS FORMATIONS, PLATEAU FIELD, ) TYPE: VARIANCE  
MESA COUNTY, COLORADO )  
 ) ORDER NO. 1-369

REPORT OF THE COMMISSION

The Commission heard this matter on October 23, 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 Walker-610S95W/4NWNE Location (Loc. ID. 312545) located in Mesa County, Colorado:

Township 10 South, Range 95 West, 6th P.M.  
Section 4: NW $\frac{1}{4}$ NE $\frac{1}{4}$

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, amended June 11, 2024, 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 Walker-610S95W/4NWNE Location (Loc. ID. 312545) located in Mesa County, Colorado.

12. On June 18, 2024, the Colorado Energy and Carbon Management Commission (ECMC) Permitting Group provided its review of the Application, stating that the Permitting Group “has no concerns with this application.”

13. On October 9, 2024, the Director Recommendation was submitted recommending 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.” Accordingly, a hearing before the ECMC was held.

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

15. 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.

16. The Location and access road were constructed on lands owned by the Denny & Karen Lucas Living Trust (the “Surface Owner”). On August 12, 2020, in accordance with Rules 306.a. and 306.f, in effect at the time, an on-site review of the planned reclamation for the Location was conducted with the Surface Owner. The Surface Owner directed that the access road be left in a stabilized and compacted state and graveled to allow access to the property for irrigation and agricultural operations on the remainder of the Trust’s lands. Pursuant to the Surface Owner’s direction, the remainder of the Location was to be recontoured to integrate the area back into the surrounding irrigated pasture lands.

17. The Location originally comprised approximately 1.3 acres, of which approximately 0.98 acres have recontoured to establish desired drainage, reseeded, and integrated into the surrounding lands. The approximately 0.32 acres of unreclaimed access road remain level and compacted for the Surface Owner’s use.

18. On January 28, 2021, the Surface Owner executed the Final Reclamation Agreement, which confirmed its request that the access road be left unreclaimed, that the

reclamation work was performed to the Surface Owner's satisfaction, and waived further final reclamation of the access road pursuant to Rules 1004.a. and 1004.d.

19. Pursuant to the New Surface Owner's Final Reclamation Agreement, the New Surface Owner waived the portion of Rule 1004.a. as it pertains to recontouring, compaction alleviation, and revegetation of the access road.

20. Pursuant to the New Surface Owner's Final Reclamation Agreement, the New Surface Owner waived compliance Rule 1004.d. as it pertains to the access road, which has been stabilized for the New Surface Owner's use.

21. Caerus's requested variance, which is requested based on the requests and agreement with the Surface Owner, will not violate the basic intent of the Act.

22. Commission Rule 1001.c. contemplates that variances from surface reclamation requirements due to surface owner requests are consistent with the Act. More specifically, the Commission acknowledged that a surface owner's request to leave certain improvements created during oil and gas operations should be respected and leaving such improvements would not violate the basic intent of the Colorado Oil and Gas Conservation Act (the "Act"). During the Mission Change Rulemaking, the Commission identified that many variances to the final reclamation requirements involve, as here, a surface owner request "to allow for certain improvements – like a concrete slab – to remain on the surface rather than be removed and the affected land be reclaimed." November 23, 2020 Statement of Basis and Purposes, Appendix B, Comment to Rule 502, p.180 ("SBP"). "The Commission recognizes that a surface owner should have the right to request that its land be reclaimed in a manner that may vary from the Commission's Rules." Id.

23. The requested variance comes pursuant to the request and agreement with the New Surface Owner, and will not result in any net adverse impacts to public health, safety and welfare, the environment or wildlife resources.

24. The requested variance is necessary to avoid an undue hardship.

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

26. 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 variance from final reclamation requirements under Rule 1004.a. and 1004.d. for the Walker-610S95W/4NWNE Location (Loc. ID. 312545) within the Application Lands is GRANTED;
2. Within 30 days of this Order, Applicant will submit a Form 4 documenting the variance relief to Location ID: 312545. The Form 4 will include the Order number, all Rules from which relief was granted, and a summary of the relief granted.

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 24<sup>th</sup> day of October, 2024, as of October 23, 2024.

ENERGY AND CARBON MANAGEMENT  
COMMISSION OF THE STATE OF COLORADO

By   
Elias Thomas, Commission Secretary