

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

IN THE MATTER OF THE APPLICATION BY BLACK) CAUSE NO. 1
HILLS PLATEAU PRODUCTION LLC FOR A)
VARIANCE TO RULE 1004.A AND 1004.D FOR THE) DOCKET NO. 240300067
BIG CREEK LAND & CATTLE LOCATION, PLATEAU)
FIELD, MESA COUNTY, COLORADO) TYPE: VARIANCE
)
) ORDER NO. 1-427

REPORT OF THE COMMISSION

The Commission heard this matter on January 21, 2026, at the Colorado Energy and Carbon Management Commission, 1120 Lincoln St., Suite 801, Denver, Colorado, upon application for an order approving a Rule 502.b variance from the final reclamation requirements of Rule 1004.a, and 1004.d. for the Big Creek Land & Cattle-610S95W16SWNE (“Big Creek”) Access Road (Location ID 391112):

Township 10 South, Range 95 West, 6thP.M.

Section 16: SW $\frac{1}{4}$ NE $\frac{1}{4}$

FINDINGS

The Commission finds as follows:

1. Black Hills Plateau Production LLC, (Operator No. 10150) (“Black Hills” 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 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 Energy and Carbon Management Act, C.R.S. § 34-60-101 et seq. (“the 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.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.

9. On March 12, 2024, amended December 6, 2025, Black Hills, through counsel, filed a verified application (“Application”) pursuant to Rules 502 and 503.g.(9) for a variance from the final reclamation requirements of 1004.a and 1004.d. Specifically, Black Hills requests a variance from altering the access road in any manner. Black Hills states that the Location is located on private agricultural land and the surface owner desires to use the location for an outbuilding.

10. On March 26, 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.”

11. On December 10, 2025, the Director issued her recommendation on the Application. The Director 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.”

12. Further, the Director noted that all or part of the Location or the access road are located within Aquatic Sportfish Management Waters and an Elk Winter Concentration Area. These habitats are High Priority Habitats (HPH) and therefore the Director requests that the applicant and surface owner consider the value of following Colorado Parks and Wildlife best management practices associated with the various HPH impacted by the Location.

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

14. The Application requests a variance from specific final reclamation requirements of Rule 1004.a and 1004.d. for the access road on the Big Creek. The former well BIG CREEK LAND & CATTLE #16-1 (API No. 05-077-08290) was plugged and abandoned on October 30, 2006.

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

- A. Black Hills has made a good faith effort to comply with Rule 1004.a and 1004.d at the Big Creek Access Road See Rule 502.c.(1). Black Hills has completed all other reclamation requirements except for those explicitly requested by the surface owner.
 - B. Black Hills'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). The requested relief is consistent with Commission Rules, Mesa County's land use regulations, and will not endanger public health, safety, welfare, the environment and wildlife resources.
 - C. The variance is necessary to avoid undue hardship. See Rule 502.c.(3). The surface owner has refused to allow Black Hills to access the Location to complete reclamation required under Rule 1004. Without the variance, the Black Hills would be exposed to both potential administrative enforcement liability for noncompliance with the reclamation regulations, or liability in tort for trespass. Furthermore, the surface owner would be subject to endure reclamation activities it never requested nor consented to, arguably exacerbating damages and risks to public health, welfare, and the environment and/or diminution of property values.
 - 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).
 - E. Pursuant to Rule 502.c.(5), the variance contains reasonable conditions of approval and mitigation measures to avoid, minimize, or mitigate adverse impacts to public health, safety, welfare, the environment, and wildlife resources.
16. Black Hills agrees to be bound by oral order of the Commission.

17. Based on the facts stated in the verified Application, Final Reclamation Letter Agreement, and other materials submitted by Black Hills, and no Rule 507 petitions having been received, the Commission finds that Black Hills has satisfied Rule 502.c and that the requested variance to Rule 1004.a and 1004.d, is warranted for the Big Creek Access Road.


ORDER

NOW, THEREFORE, IT IS ORDERED, that:

1. The Application for Rule 502 variance from the final reclamation requirements of Rules 1004.a and 1004.d. for the BIG CREEK LAND & CATTLE-610S95W 16SWNE Access Road in Mesa 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 documenting the variance relief to Location ID: 391112. The Form 4 will include the Order number, all Rules from which relief was granted, a summary of the relief granted, the date of variance approval, and any COAs that the Commission approved as part of the variance.
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 22nd day of January, 2026, as of January 21, 2026.

ENERGY AND CARBON MANAGEMENT COMMISSION
OF THE STATE OF COLORADO

By  _____
Elias J. Thomas, Commission Secretary