

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

IN THE MATTER OF CHANGES TO THE)	CAUSE NO. 1R
RULES AND REGULATIONS OF THE OIL)	
AND GAS CONSERVATION COMMISSION)	DOCKET NO. 200300071
OF THE STATE OF COLORADO)	
_____)	

PUBLIC COMMENT OF COLORADO COMMUNITIES FOR CLIMATE ACTION

Colorado Communities for Climate Action (“CC4CA”) submits this public comment pursuant to Rule 510 on the Colorado Oil and Gas Conservation Commission’s (“COGCC” or the “Commission”) draft rules for the 200-600 series. CC4CA is a coalition of local governments in Colorado, formed in Spring 2015, to advocate for state and federal policies to protect Colorado’s climate for future generations. CC4CA currently has 34 member governments, including the City of Aspen, the Town of Avon, the Town of Basalt, the City of Boulder, Boulder County, the Town of Breckenridge, the City and County of Broomfield, the Town of Carbondale, Clear Creek County, the Town of Crested Butte, the Town of Dillon, Eagle County, the Town of Erie, the City of Fort Collins, the Town of Fraser, the Town of Frisco, Gilpin County, the City of Glenwood Springs, the City of Golden, the City of Lafayette, the City of Longmont, the City of Louisville, the Town of Lyons, the Town of Mountain Village, the Town of Nederland, the City of Northglenn, Pitkin County, the Town of Ridgway, the City of Salida, San Miguel County, Summit County, the Town of Telluride, the Town of Vail, and the City of Westminster. CC4CA’s member jurisdictions currently represent roughly one-seventh of the state’s population.

CC4CA greatly appreciates the time and effort the Commission, COGCC staff, parties, and stakeholders have devoted to developing the draft rules and largely supports the rules while agreeing with improvements suggested by several parties.

I. COGCC’s Rules Must Be Designed to Help Meet the State’s Greenhouse Gas Emission Reduction Goals

Many of CC4CA’s members have adopted their own climate and sustainability-oriented goals and programs, but they recognize that local governments are unable to meet these local goals on their own. State and federal policies have an enormous impact on the effectiveness of local policies. Moreover, the impacts of climate change are often felt most immediately and intensely at the local level. These realities led to the creation of CC4CA, in which local governments have joined forces to work for state and federal actions supporting and complementing local climate-protection actions.

CC4CA agrees with Western Resource Advocates (“WRA”) that the COGCC must implement rules to ensure progress is made toward meeting the state’s greenhouse gas (“GHG”) emission reduction targets set forth in House Bill 19-1261 (“HB 1261”). In passing HB 1261, the Colorado General Assembly stated that “climate change adversely affects Colorado’s economy, air quality and public health, ecosystems, natural resources, and quality of life.” The

General Assembly recognized “Colorado is already experiencing harmful climate impacts,” and “many of these impacts disproportionately affect” certain disadvantaged communities.¹ Thus, the General Assembly established science-based GHG emission reduction targets of 26%, 50%, and 90% below 2005 levels in 2025, 2030, and 2050, respectively.²

Although the Air Quality Control Commission (“AQCC”) is the state agency charged with ensuring that Colorado meets these emission reduction targets, the State cannot meet the targets solely through reductions under AQCC jurisdiction; indeed, the AQCC and the Colorado Department of Health and Environment (“CDPHE”) have acknowledged that they expect other agencies to take actions that will reduce GHG emissions. Thus, COGCC, as the agency with jurisdiction over oil and gas development and production (as opposed to solely emissions from operations), must ensure that its actions in permitting and approving applications for oil and gas development align with HB 1261’s goals.

CC4CA supports WRA’s proposed “Climate Action Rule” to assist the state in meeting its HB 1261 targets. This proposal would require operators to quantify the lifetime GHG emissions associated with their proposed development and permit the operator to propose or consider measures to reduce those emissions. The proposed rule also requires the Director to determine whether the approval of an application aligns with Colorado’s GHG emission reduction goals under HB 1261, relying on an emission budget for the oil and gas industry established by the AQCC or, in the interim, by the COGCC. Finally, WRA’s proposal would require the Director to report annually on the total future GHG emissions associated with applications approved since the previous annual report and whether the oil and gas sector is projected to meet its emission budget.

The proposed Climate Action Rule is essential to helping Colorado meet its GHG emission reduction goals. Regulations within the AQCC’s jurisdiction alone will not be sufficient to control climate pollution from the oil and gas sector – the COGCC must also use its regulatory authority to help ensure that production levels are managed through the permitting and approval process to help ensure that these goals are met. The COGCC must play a role in ensuring that its approval of new oil and gas development (and emissions from this sector) is consistent with the HB 1261 goals through understanding the lifecycle emissions of the proposed development. Without understanding the additional emissions from new development, the COGCC cannot ensure that its approval of any new development will align with the science-based emission reduction targets. For these reasons, CC4CA supports WRA’s proposal.

II. A Robust Cumulative Impacts Analysis Must be Required

CC4CA also believes that a robust cumulative impacts analysis must be required by the COGCC’s rules to ensure that the impacts of a proposed development can be addressed, avoided, and minimized to comply with Senate Bill 2019-181 (“SB181”). The current draft rule for a cumulative impacts evaluation does not meet the SB181 requirements that the COGCC “evaluate and address” cumulative impacts of oil and gas development.³ In order to understand the full impacts of a proposed development, Rule 303 must define cumulative impacts, require

¹ C.R.S. § 25-7-102(2).

² *Id.* § 25-7-102(2)(g).

³ C.R.S. § 34-60-106(11)(c)(II).

quantification of impacts whenever possible, and delineate a broad geographic scope for analyzing cumulative impacts.

In addition, CC4CA agrees with suggestions from numerous parties that the COGCC staff, in consultation with CDPHE and other agencies and/or an outside consultant, conduct the cumulative impacts analysis. This would help ensure that the analysis is robust and properly analyzes cumulative impacts to meet the requirements of SB181. Finally, CC4CA agrees that the social cost of carbon tool should be used in cumulative impacts analyses to evaluate and understand the cumulative impacts of GHG emissions from proposed development.

III. COGCC Should Not Defer or Abdicate Its Regulatory Authority Over Federal Lands and Minerals

CC4CA supports the draft rules' approach to incorporating analyses and decision-making conducted by federal agencies with respect to proposed development on federal public lands or of federal minerals. Under the draft rules, COGCC's rules would apply generally to all proposed development to ensure that the applicability of the protective provisions does not vary depending on land or mineral ownership. This aligns with SB181's goals and requirements. The draft rules specifically address operations on federal lands in only a few instances, including Rule 303.a.(5), which permits an operator to submit a cumulative impacts evaluation conducted pursuant to a federal permit review process for proposed operations on federal lands which have been approved by a federal agency.

CC4CA believes this is an appropriate approach to regulating operations on federal lands and development of federal minerals. The Commission should reject proposals from several parties—including the Western and Rural Local Government Coalition ("WRLG")—to defer its regulatory authority to federal regulators or limit its authority over federal lands and minerals. For example, the Commission should reject WRLG's proposed Rule 503.o which would remove COGCC's authority over development on federal lands and require operators to comply only with the rules and regulations of the relevant federal agency.

SB181 requires the COGCC to protect public health, safety, and welfare, including protection of the environment and wildlife resources in regulating oil and gas development.⁴ Deferring or abdicating regulatory authority to federal agencies will not ensure that these values are protected. Moreover, both the Bureau of Land Management ("BLM") and the U.S. Forest Service have multiple-use mandates which require balancing of uses across their landscapes; however, the multiple-use mandate is much less protective than the Commission's new mission under SB181.⁵ Requiring compliance only with BLM and Forest Service regulations would not comply with SB181. Moreover, the federal agencies have the ability to change their regulations at any time in the future; accordingly allowing the COGCC to abdicate its authority with regard projects on federal land would be even more perilous. As such, the Commission should reject any proposal to limit the COGCC's regulatory authority over development on federal lands or of federal minerals.

⁴ C.R.S. § 34-60-102(1)(a)(i).

⁵ See 43 U.S.C. § 1732(a); 16 U.S.C. § 528.

IV. The Rules Should Provide for Pre-Application Consultation with Local Governments

CC4CA supports the Affiliated Local Government Coalition's ("ALGC") proposal that all oil and gas development applications be subject to a pre-application process. Pursuant to their proposal, COGCC would convene a joint pre-application process between the operator, the Relevant Local Government, any Proximate Local Government, COGCC staff, and other relevant state and federal agencies. During the pre-application process and meeting, the parties would discuss the requirements of each agency or local government, how the requirements could be harmonized, and where there may be overlap or potential conflict. Beginning these conversations early in the permitting process is important for helping ensure that all parties are aligned in their understanding of other agencies' various regulatory requirements.

CC4CA appreciates the opportunity to comment on the draft rules for the 200-600 series. If the Commissioners have any questions regarding these comments, please contact Tom Easley at easley@rockymountainclimate.org.

Submitted this 18th day of August, 2020.

By: KAPLAN KIRSCH & ROCKWELL LLP

Sarah M. Keane

Sarah M. Keane
KAPLAN KIRSCH & ROCKWELL LLP
1675 Broadway, Suite 2300
Denver, Colorado 80202
Phone: (303) 825-7000
Fax: (303) 825-7005
E-mail: skeane@kaplankirsch.com

*Attorneys for Colorado Communities for
Climate Action*