Statement of Basis, Specific Statutory Authority, and Purpose

Amendments to Current Rules of the Colorado Oil and Gas Conservation Commission, 2 CCR 404-1

Cause No. IR Docket No. 200600152

Conservation Levy Rulemaking

This statement sets forth the basis, specific statutory authority, and purpose for amendments ("Conservation Levy Rulemaking") to the Colorado Oil and Gas Conservation Commission ("Commission") Rules of Practice and Procedure, 2 CCR 404-1 ("Rules"). The Commission promulgated the Conservation Levy Rulemaking on August 4, 2020.

In adopting amendments to the Rules, the Commission relied upon the entire administrative record for this Rulemaking proceeding, which formally began on June 30, 2020, when the Commission submitted its Notice of Rulemaking to the Colorado Secretary of State.

Statutory Authority.

The Commission's authority to promulgate amendments to the Rules is derived from the following sections of the Colorado Oil and Gas Conservation Act ("Act"), §§ 34-60- 101 – 131, C.R.S.:

- Section 34-60-103, C.R.S. (Definitions);
- Section 34-60-105(1), C.R.S. (Commission has the power to make and enforce rules);
- Section 34-60-108, C.R.S. (Commission has authority to adopt rules, and procedures for adopting rules);
- Section 34-60-122, C.R.S. (Commission shall fix the conservation levy, in an amount not to exceed one and seventh tenths mill, to be assessed on the market value of all oil and gas produced, saved and sold or transported from the field in the state); and
- Section 34-60-124, C.R.S. (establishing the Oil and Gas Conservation and Environmental Response Fund).

Identification of New and Amended Rules.

Consistent with its statutory authority and its legislative mandates, and in accord with the administrative record, the Commission amended Rule 310.

Overview of Purpose and Intent.

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The Colorado Oil and Gas Conservation Act, §§ 34-60-101 – 131, C.R.S. ("Act"), directs the Commission to set the conservation mill levy at a rate that may not exceed one and seven tenths of a mill, ("Conservation Levy"). *See* § 34-60-122(1)(a). The Conservation Levy is assessed on the market value of oil and gas sold and funds the Oil and Gas Conservation and Environmental Response Fund ("Fund"), established by § 34-60-124, C.R.S. Revenues received from the Conservation Levy and proceeds from the tax on the severance of oil and gas provide the majority of funding for the Commission's operations.

Out-year projections for the Fund show expenditures will outpace revenues due to the drop in commodity prices during the spring of 2020 and the expectation they will remain depressed and drive operators to cut production into 2021. Without an increase in the Conservation Levy, the Fund is projected to be depleted by late FY 2021–22.

The projected Fund shortfall is compounded by recent forecasts from the Legislative Council that show oil and gas severance tax revenues will be significantly lower in FY 2020–21 than previously anticipated. This expected reduction in severance tax revenue could potentially affect the Commission's FY 2021–22 appropriation from the Severance Tax Operational Fund. An increase to the Conservation Levy could possibly help offset a reduction in this appropriation, if necessary to prevent negative impacts to the Commission's operations.

The last time the Commission fixed the Conservation Levy was in 2018 when it increased the Conservation Levy by four-tenths of a mill. *See* Commission Order No. 1R-127. The Commission finds that it is necessary to increase the Conservation Levy to mitigate the impact of projected lower commodity prices and production.

Amendments and Additions to Rules.

Rule 310.

Rule 310 is amended to set the Conservation Levy up to $0.0017 per dollar value.

Effective Date.

The Commission adopted the proposed amendments, which added to and amended Rule 310, at its hearing on August 4, 2020, in Cause No. IR, Docket No. 200600152. These amendments will become effective, per Section 24-4-103, C.R.S., twenty days after publication in the Colorado Register, on September 30, 2020.

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