

Colorado Oil and Gas Association

HB 13-1316 – VOTE NO

Good afternoon. My name is Jamie Jost and I am a shareholder at the law firm of Beatty & Wozniak, P.C. I am here today on behalf of the Colorado Oil and Gas Association to OPPOSE House Bill 13-1316 as it effectively repeals COGCC Rule 318A.e.(4) and to provide the continuing support of the Colorado Oil and Gas Conservation Commission's groundwater sampling and monitoring rulemaking process.

The rules were the outcome of several months of intense stakeholder meetings and commission hearings. Based on testimony and written evidence and after a thoughtful deliberation, the COGCC unanimously enacted new Rule 609 and an important modification to the Greater Wattenberg Area Rule (GWA). The result – new or additional water sampling conducted before and after drilling that allow the COGCC to monitor for potential changes in water quality over time and a water monitoring program that supplements pre-existing water sampling requirements in the Greater Wattenberg Area.

There are five main points that mandate this Committee to vote “NO” on House Bill 13-1316 are as follows:

1. Consideration of all factors in the rulemaking led the Commission, which includes the Director of the Department of Public Health and Environment, the Director of the Department of Natural Resources, and the Chairman of the Regional Air Quality Control Council, to adopt the strongest water quality monitoring rule of any state.
 - a. HB 1316 undermines the authority and credibility of the COGCC Director and staff of technical and scientific experts who spent endless hours on the rulemaking, as well as the nine members of the Oil and Gas Commission, all of which are armed with the expertise and background to approve the rules which went into effect on May 1, 2013.
 - b. The message that the approval of this bill is sending the public is:
 - i. We do not trust our appointed leaders in the state agencies; and
 - ii. We are in a better position to repeal a long-existing rule with zero evidence that it is not working.
2. GWA rule is not an exemption, exception, carve-out or loophole, but a stand-alone long-existing rule that was adopted in 2006, amended in 2013, which addressed the complexity of GWA and to provide the necessary groundwater sampling and monitoring program that would serve the purpose of obtaining data for the current water quality rather than a “baseline” which is unobtainable within GWA. It was modified during the rulemaking in order to increase the amount of groundwater samples collected – by a factor of 4 – while acknowledging the unique and complex nature of the area.
3. Water sampling and monitoring acts as an adjunct to COGCC Rules that already address well integrity, spill avoidance and containment, and other requirements that directly protect groundwater. That is why, instead of additional testing, it is important to focus on other COGCC rules that groundwater sampling supplements:
 - o Rule 317 (surface casing, well cementing and ongoing pressure testing)

- Rule 317A (public water supply area protection)
 - Rule 326 (mechanical integrity testing)
 - Rule 904 (pit construction and lining)
 - New Rule 604 (production facility secondary containment)
 - Rule 303 (surface disturbance requirements and conditions of approval)
 - Rule 207 (COGCC authority to mandate additional testing in response to spills, releases and complaints)
4. COGCC Rule 207 allows the Director of the Commission to mandate additional groundwater sampling at any time in response to spills, releases, or complaints. This Rule existed prior to the adoption of Rule 609 and Rule 318A.e.(4), and will continue to apply.
 5. In addition to the increased groundwater sampling requirements in GWA, any water well owner can contact the COGCC and request water well testing if they believe their water quality has been impacted by oil and gas development. Weld County has also instituted free water well testing on request.

Further, COGA is opposed to HB 1316 for the following reasons:

1. It is unnecessary and fails to account for unique characteristics of specific areas of the state.
 - a. A statewide "one size fits all" water sampling rule does not fit the complexity of the Greater Wattenberg Area in Colorado. It disregards an existing groundwater sampling rule that has been in-place since 2006. The data shows, by the way, that there has been no systemic groundwater impact from drilling and production in GWA.
2. Rule 318A.e(4) is not an exclusion or a loophole from the new statewide sampling Rule 609.
 - a. The Commission has repeatedly recognized the need for unique regulatory treatment of GWA. Recognizing the significant economic benefits of GWA development, the long history and intense current investment in hydrocarbon development, the complex nature of the tight formations in the GWA, and the need to mitigate conflicts between mineral rights and surface interests, the Commission has promulgated predictable and protective rules unique to the area. The adoption of HB 1316 would be a significant departure from these carefully crafted and effective basin specific GWA regulations.
 - b. Amended Rule 318A.e(4) changed the requirement to test one well per section prior to drilling only, to a new requirement to test one well in each quarter section (4 wells per section) with both a pre-drilling sample and a post-drilling sample. Rule 318A.e(4) will eventually result in the vast majority of the 11,600 governmental quarter sections that comprise GWA being tested. More testing will occur in GWA than in any other area of the state due to the 34,000 water wells available for testing. The increase in sampling from one per section to four per section supports the COGCC's objectives to evaluate the groundwater conditions within GWA on a broad, area-wide scale. Rule 318A.e(4) balances the need for a meaningful water-testing regime with the regulatory burden that

comprehensive testing creates in such a prolific area of industrial, agricultural, and other activities.

c. To address the issue directly, the question that has been asked repeatedly is **WHY NOT TEST 4 WELLS PER HALF-MILE IF INDUSTRY CAN HAVE FURTHER ASSURANCES OF THE WATER QUALITY PRIOR TO DRILLING?**

- The perception may be that the more data, the better. However, while Rule 609 seeks to establish baseline groundwater quality, well tests in the GWA will not reflect a true baseline. Rather, at best, it will show only a snapshot in time of the highly variable existing water quality across the DJ Basin based on historic activity and natural fluctuations in hydrology. For example, as already discussed, the DJ Basin and specifically GWA has been an active oil and gas development area for over 30 years and is a central industrial and agricultural core area in Colorado. "Baseline" conditions no longer exist. In addition, the geologic and hydrologic conditions in the DJ Basin, especially shallow coal stringers and organic-enriched shale layers result in naturally-occurring methane in groundwater throughout the DJ Basin.
- Testing 4 wells per section with one pre-drilling sample and one post-drilling sample will, over time, lead to the groundwater sampling of a majority of the 11,600 quarter sections in GWA. Any increase in testing over this amount will result in numerous data points with limited value due to the variable water quality that already exists in GWA. HB 1316 does not meet the cost-benefit test that all regulations in Colorado must satisfy.

3. Promulgation of a statute based on limited statistical information would be an improper and unjustified.

- a. Spill statistics alone, without understanding the context in which they present themselves, offers a biased perspective of the information the statistics purport to represent. To date, no information has been presented in the rulemaking, or in any other legislative testimony, that addresses the range of significance of these spills, the number of spills that actually impacted or threatened drinking water sources, or the context in which these spills occurred. The statistics offered to do not reflect the minimal risk to drinking water resulting from such spills.
- b. The spills referenced rarely impact water beyond 20 feet in depth as measured from the surface. Water at 20 feet in depth or less represents groundwater that is not typically suitable for human consumption. In the Colorado Division of Water Resources (DWR) database, approximately ten (10) percent of permitted water wells in the GWA are completed within 20 feet of the surface and these wells are typically only used for purposes other than domestic consumption. When overlaying this fact with the statistics presented in this hearing, it is clear that the true risk to well water used as drinking water from spills is significantly less than suggested.
- c. Further, COGCC has extensive regulations that not only protect groundwater, but also regulate undesirable events such as spills and releases. The COGCC is the implementing agency for groundwater standards at oil and gas related facilities. Operators are required to remediate these impacts to acceptable groundwater standards established by the Water Quality Control Commission under the 900

Series rules. The COGCC 900 Series Rules specifically address the requirement to conduct groundwater sampling in the event of a release that threatens to impact or impacts groundwater.

It is important not to lose sight of the unique conditions in GWA – the combination of energy development, agriculture, and other industrial and residential uses unique to the area – that have driven their own set of rules and regulations for almost three decades.

To conclude, COGA specifically requests that the COGCC be allowed to carry out its rulemaking function, which mandates compliance with new Rule 609 and amended Rule 318A.e(4) which took effect on May 1, 2013. It would be premature to overturn the GWA groundwater testing rule before its effectiveness can be assessed based on results.

Thank you for the opportunity to speak on HB 1316 today and I welcome any questions that you may have.