

Summary of Oil and Gas Legislation, 2009 Session (As of June 4, 2009)

Signed into Law

Bill Number: **HB 09-1292**

Short Title: **Review Rules and Regulations of State Agencies**

Sponsors: *Rep. McGihon*
Sen. Veiga

Status: Signed into Law

The *law* continues the rules and regulations of state agencies that were adopted or amended on or after November 1, 2007, and before November 1, 2008. It also allows certain rules and regulations to expire on May 15, 2009. Included in this law are the rules adopted by the Colorado Oil and Gas Conservation (COGCC) on December 11, 2008, to implement HB 07-1341 and HB 07-1298. HB 07-1341 required the COGCC, in consultation with the Department of Public Health and Environment, to promulgate rules that protect the health, safety, and welfare of the general public in the conduct of oil and gas operations. HB 07-1298 required the COGCC to consult with the Colorado Wildlife Commission and the Division of Wildlife (DOW) in establishing rules for oil and gas operations that would minimize adverse impacts on wildlife resources and habitat. HB 09-1292 repeals the rule that requires an oil and gas operator to consult with the COGCC, the surface owner, and the DOW concerning impacts to wildlife resources. It also repeals the rule concerning atmospheric tanks used for crude oil storage and vent lines for these tanks. The law allows the other rules adopted by the COGCC to take effect.

Appropriations:

This act does not affect state or local revenue or expenditures.

Summary of Oil and Gas Legislation, 2009 Session June 4, 2009 (Cont.)

Awaiting Governor's Signature

Bill Number: **HB 09-1303**

Short Title: **Administration of Mineral Development Water Wells**

Sponsors: *Rep. Curry*
Sen. Isgar

Status: Awaiting Governor's Signature

The act establishes a process to integrate coalbed methane (CBM) wells that remove tributary ground water (water this is connected to stream) into the doctrine of prior appropriation and the water court adjudication process. Such wells will be required to apply to the appropriate water court for an augmentation plan. Between the years 2010 and 2012, the DWR is allowed to approve annual substitute water supply plans for these wells. Beginning in 2013, only CBM wells with an approved augmentation plan or an approved substitute water supply plan may be operated. Such plans protect other water rights from injury caused by out-of-priority diversions. The act also allows CBM wells that remove tributary groundwater to operate without such plans if they can be operated in priority.

Appropriations:

The DWR will need to review permits for 4,600 wells. Permit revenue paid by the applicants will be \$460,000 and the DWR will incur expenditures of \$984,000 related to evaluation of these permits.

The act allows the Division of Water Resources (DWR) to promulgate rules regarding the withdrawal of non-tributary ground water related to oil and gas wells. In general, nontributary groundwater is isolated from stream systems. The rules must be promulgated in accordance with the State Administrative Procedures Act, and must not conflict with existing laws or affect existing ground water well permits. The act delays when current prohibitions on the waste of water or the destruction of water resources apply to oil and gas wells until March 31, 2010, to allow for rule promulgation and to determine which existing oil and gas wells will be classified as nontributary.

In *Vance v. Simpson*, the Colorado Supreme Court ruled on April 20, 2009, that removing water from a ground water formation while recovering oil or gas is a beneficial use of water. As a result, CBM wells are subject to permitting, adjudication, and administration pursuant to the doctrine of prior appropriation and the Ground Water Act.

Summary of Oil and Gas Legislation, 2009 Session June 4, 2009 (Cont.)

| Postponed Indefinitely | |
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| <p>Bill Number: SB 09-04</p> <p>Sponsors: <i>Sen. Brophy</i> <i>Rep. Bradford</i></p> <p>The <i>introduced</i> bill would have specified that the rules promulgated by the Colorado Oil and Gas Conservation Commission concerning permit review, the protection of public health, safety, and welfare, and the protection of wildlife resources, could not take effect prior to July 1, 2010.</p> | <p>Short Title: Moratorium on COGCC New Rules</p> <p>Status: Postponed indefinitely in Senate Local Government and Energy</p> <p>Appropriations:</p> <p style="padding-left: 40px;">This bill would not have affected state or local revenue or expenditures.</p> |
| <p>Bill Number: SB 09-220</p> <p>Sponsors: <i>Sen. Lundberg</i> <i>Rep. Lambert</i></p> <p>For each tax year from 2012 through 2020, the introduced bill would have exempted an additional 20 percent of oil shale production occurring at a <i>primary commercial oil shale facility</i> from the state's severance tax. The bill defined these facilities as a facility where: construction was started before January 1, 2012; and 25 percent of the average number of employees who worked at the facility during the current year were employed at the facility on January 1, 2012. A similar bill, HB 09-1038, was postponed indefinitely when its sponsor, Representative Lundberg, was appointed to fill a vacancy in the Senate.</p> | <p>Short Title: Oil Shale Severance Tax Exemption</p> <p>Status: Postponed indefinitely in Senate State, Veterans, and Military Affairs</p> <p>Appropriations:</p> <p style="padding-left: 40px;">The bill could have reduced state revenue if production at a qualifying facility exceeded levels that were exempted from the Severance Tax under current law. Any fiscal impact would not occur until after 2012 when the exemption takes effect. To date, no commercial oil shale production occurs in Colorado, and no facilities are expected to be built that are capable of producing at the level that would have been affected by the bill in the near future.</p> |
| <p>Bill Number: SB 09-229</p> <p>Sponsors: <i>Sen. Isgar</i></p> <p>The introduced bill would have required the Colorado Oil and Gas Conservation Commission (COGCC) to obtain consent from a surface owner or the surface owner's appointed tenant prior to imposing any conditions for wildlife resource protection pursuant to the "Wildlife Habitat Stewardship Act of 2007." It also required the COGCC to use off-site mitigation measures if the surface owner or tenant withholds such consent.</p> | <p>Short Title: Colorado Oil and Gas Conservation Commission Wildlife Protections</p> <p>Status: Postponed indefinitely in Senate Local Government and Energy</p> <p>Appropriations:</p> <p style="padding-left: 40px;">A fiscal note was not drafted because the sponsor requested that the bill be postponed indefinitely.</p> |

Summary of Oil and Gas Legislation, 2009 Session (As of June 4, 2009) (Cont.)

| Postponed Indefinitely (Cont.) | |
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| <p>Bill Number: HB 09-1062</p> <p>Sponsors: <i>Rep. Curry</i> <i>Sen. Schwartz</i></p> <p>The introduced bill would have required the Colorado Oil and Gas Conservation Commission (COGCC) to contract with the U.S. Geological Survey to implement a baseline surface and ground water monitoring program in the Piceance Basin area which includes the counties of Rio Blanco, Mesa, Delta, Garfield, and Gunnison. This information would have been used to provide data to discern long-term water quality trends and to manage water resources for beneficial uses as energy development and associated land and water use changes occur.</p> | <p>Short Title: Study Impacts of Oil and Gas on Water Quality in the Piceance Basin</p> <p>Status: Postponed Indefinitely in House Agriculture, Livestock, and Natural Resources</p> <p>Appropriations:</p> <p style="padding-left: 40px;">The bill would have required an appropriation of 0.3 FTE and up to \$500,000 annually in each of the next 4 years from the COGCC Environmental Response Fund for the water monitoring program.</p> |
| <p>Bill Number: HB 09-1167</p> <p>Sponsors: <i>Rep. McKinley</i></p> <p>The introduced bill would have prohibited the Colorado Oil and Gas Conservation Commission from promulgating any rule regarding wildlife feeding, breeding, habitation, or migration, if such rule would adversely impact the operation, servicing, or maintenance of a producing oil or gas well.</p> | <p>Short Title: Oil and Gas Conservation Commission Wildlife Rule Impact on Oil and Gas Wells</p> <p>Status: Postponed Indefinitely in House Agriculture, Livestock, and Natural Resources</p> <p>Appropriations:</p> <p style="padding-left: 40px;">This bill would not have affected state or local revenue or expenditures.</p> |

Summary of Oil and Gas Legislation, 2009 Session (As of June 4, 2009) (Cont.)

| Postponed Indefinitely (Cont.) | |
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| <p>Bill Number: HB 09-1231</p> <p>Sponsors: <i>Rep. Bradford</i> <i>Sen. Kopp</i></p> <p>The introduced bill would have created a three-member Oil Shale Development Task Force appointed with mutual consent by the Governor, the Speaker, the House Minority Leader, the President, and the Senate Minority Leader. The task force was charged with making recommendations to the General Assembly and the Governor regarding the development of oil shale in Colorado by January 15, 2011, and submitting reports by January 15 of odd-numbered years thereafter. In conducting its investigation, the task force was to consider the:</p> <ul style="list-style-type: none"> • opportunity that oil shale development provides for promoting energy independence and increasing state and local government revenue; • appropriate pace of oil shale development; • various methods being developed for oil shale production; • sources of data on oil shale development and uncertainties and restrictions associated with such data; and • environmental, economic, and community impacts of oil shale development. <p>The task force would have been required to hold periodic meetings and provide citizens the opportunity to submit written comments. The task force was the designated official representative of the state on federal actions pertaining to oil shale production. The task force would have been repealed July 1, 2019.</p> | <p>Short Title: Oil Shale Development Task Force</p> <p>Status: Postponed indefinitely in House Agriculture, Livestock, and Natural Resources</p> <p>Appropriations:</p> <p style="padding-left: 40px;">For FY 2009-10, the Department of Natural Resources would have required a General Fund appropriation of \$6,010.</p> |

Summary of Oil and Gas Legislation, 2009 Session (As of June 4, 2009) (Cont.)

| Postponed Indefinitely (Cont.) | |
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| <p>Bill Number: HB 09-1255</p> <p>Sponsors: <i>Rep. Gardner, C.</i> <i>Sen. Kopp</i></p> <p>The introduced bill would have amended the Colorado Habitat Stewardship Act of 2007 that requires the Colorado Oil and Gas Conservation Commission (COGCC) to consult with the Division of Wildlife (DOW) to minimize the impacts from oil and gas development on wildlife resources. HB 09-1255 specified that an oil and gas operator was not required to consult with the DOW to determine whether wildlife mitigation requirements are technically and economically feasible and requires the COGCC to make that determination. It would have prohibited the COGCC from imposing surface use restrictions on oil and gas operations on private lands without the consent of the surface owner. The COGCC was also prohibited from denying an application for a permit because the surface owner did not consent to a wildlife mitigation requirement. The COGCC had to establish best management practices that were presumptive conditions for operations in the affected area. The bill prohibited the executive directors of the Department of Natural Resources and the Department of Public Health and Environment from participating in appeals of mitigation measures proposed by the DOW.</p> <p>The final rules to implement the Colorado Habitat Stewardship Act of 2007 were adopted by the COGCC on December 11, 2008. The rules will be reviewed by the General Assembly during the 2009 legislative session. Unless otherwise specified, these rules are effective on April 1, 2009, for operations on private land, and May 1, 2009, for operations on federal land.</p> | <p>Short Title: Limit Oil and Gas Permit Wildlife Mitigation</p> <p>Status: Postponed Indefinitely in House Agriculture, Livestock, and Natural Resources</p> <p>Appropriations:</p> <p style="padding-left: 40px;">For FY 2009-10, the Department of Natural Resources would have required a cash fund appropriation of \$84,880 and 1.0 FTE from the COGCC Environmental Response Fund.</p> |