

# Phillip D. Barber, P.C.

1675 Larimer Street, Ste. 620  
Denver, Colorado 80202  
Telephone: 303-894-0880  
Facsimile: 720-904-5755  
E-mail: Phillipbarber@aol.com

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August 3, 2011

Via E-mail

Thom Kerr  
Permit Technical Services Manager  
Colorado Oil and Gas Conservation Commission  
1120 Lincoln Street, #801  
Denver, CO 80203

Re: Proposed Rule 318A language revision

Dear Thom:

I am writing this letter on behalf of the City and County of Broomfield (“Broomfield”), to transmit its comments concerning the proposed changes to the Greater Wattenberg Special Area Rule 318A, most recently found in the language that was circulated by you on Friday, July 29, 2011. Please share these comments with other stakeholders or members of the staff and Commission.

Broomfield objects to the accelerated way in which the proposed rule changes and amendments to those rule changes have been presented to the public. Significant rule changes were made to Rule 318A in 2008, which are now either being eliminated, diluted or changed. The 2008 changes were adopted *only* after many public meetings and a much longer comment period. Broomfield does not believe that stakeholders have had adequate notice of the proposed changes to Rule 318A, or an adequate opportunity to understand them and provide their comments. Therefore, Broomfield requests that no action be taken on the proposed changes at this time.

The new rules greatly expand the “GWA infill” area, meaning that the geographic limitation that was carefully discussed and negotiated in 2008 has been nullified. Second, the number of wells that will be allowed in the GWA (whether under the old geographic boundaries or under the new) has been increased far beyond what was adopted in 2008. In fact, there appears to be *no limit* to the number of wells under the proposed changes. This will result in higher costs, greater surface disturbance, and other injuries to entities such as Broomfield in their

capacity as landowner, purchaser of open space and park land, and municipality providing public services. The revisions also impact the private sector developers as costs to contain or remove oil and gas drilling on proposed development sites will increase because of the unlimited number of potential wells. Finally, the bases on which objections can be made to applications for a permit to drill have been unrealistically limited. Each of these objections, as well as several other objections, are discussed below.

In the existing Rule 318A, the "GWA infill" -- which increased the number of allowed wells -- was limited to areas north of State Highway 7 in Broomfield. The proposed rules unilaterally expand the GWA infill to all of the Greater Wattenberg Area, which includes thousands of additional acres in Broomfield and other counties. This was done without adequate notice, hearing and public participation, particularly by all affected local governments like Boulder County, Jefferson County, Adams County, Broomfield and other municipalities.

Not only has the geographic boundary been suddenly expanded, the proposed rules remove the limit on the number of wells that can be drilled in the GWA (whether in the old or new geographic area). Broomfield's primary concerns with expanding the geographic area of the GWA infill and removing the limit on the number of wells that can be drilled, are that the combination of these changes has the potential to dramatically increase the cost to municipalities such as Broomfield for all public and private projects proposed on property within the jurisdiction. It will certainly make acquiring and managing open space more expensive, will potentially hamper public-private development projects, and it will likely lead to increased degradation of public lands. These two revisions alone (expanding the GWA infill and number of wells) will impact private sector developers by increasing their costs to buy-out drilling sites or to negotiate surface use agreements. Projects which may have had a future will now be put on the shelf. Specifically, Broomfield requests that the proposed changes to Rule 318.A.e. and f. be rejected.

Broomfield also objects to the limitation on the scope of objections that can be made under the proposed 318.A.e.6.B. The proposed language seems to limit the bases upon which an interested person may object to well location and spacing units, to whether the operator has not complied with informational requirements, dealt with matters involving waste and correlative rights, or that the operator is not the "owner" of the mineral estate. Broomfield opposes this limitation and suggests that an interested party who wishes to make an objection should be allowed to present *any* objection that is permitted by the Commission rules or by law. For instance, the proposed rule change could potentially limit objections that might be made under the Series 600 Rules (high density areas, designated outside activity areas, health and safety concerns, etc.). The proposed language for this rule should either be rewritten or rejected.

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As noted above, Broomfield strongly opposes the nullification of the geographic limitation and on the number of producing completions that were present in the prior version of this Rule, which have been eliminated in this version. When Broomfield considers public or public-private projects, the potential cost of dealing with the mineral interest is frequently an issue. The proposed change will surely raise the cost to the municipalities and, ultimately, put a damper on public and public-private projects.

Rule 318A.e.6.C. places the burden of proof upon the objecting party. Broomfield believes that the operator should have the burden of proof, with objections going to whether the operator has satisfied its overall burden of proof.


The proposed Rule 318A.m. appears to allow only another operator to object to "minimum intrawell distance". The ability to object should be available to any interested party, not just to another operator.

In summary, the changes to which Broomfield objects will likely increase surface disturbance on affected lands, increase the costs to municipalities for public and public-private projects, increase the costs to develop for the private sector, hinder the creation and maintenance of parks and open space, and potentially deprive surface owners of existing bases to object to proposed wells. Further, Broomfield strongly opposes the procedure and process that has been used to propose and potentially adopt the revised Rule 318A.

Please feel free to contact me, or Kristan Pritz, Director of Open Space and Trails, City and County of Broomfield, if you have any questions.

Sincerely,

PHILLIP D. BARBER, P.C.



Phillip D. Barber

PDB/sfp

(via e-mail)

cc: David Nesland  
Robert A. Willis  
Kristan Pritz  
Tami Yellico, Esq.  
Kevin Standbridge, Deputy City and County Manager  
Charles Ozaki, City and County Manager