

# COLORADO RISING

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December 17, 2020

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Adams County Board of Commissioners  
4430 S. Adams County Parkway, 5<sup>th</sup> Floor  
Suite C5000A  
Brighton, CO 80601

Re: Ivey Site

Dear Commissioners:

As you may be aware, Great Western Oil and Gas Company is preparing the Ivey Site for drilling and production. You have been contacted by Adams County residents who are very concerned about the activity on the site. We are contacting you not only as an Adams County residents, but also as representatives of our groups to ask that you stop this project from continuing until Great Western is held to the strictest standards found in state law and regulation. Our request is not without support.

On February 17, 2015, and June 30, 2015, Ward Petroleum and Adams County, respectively, signed a Memorandum of Understanding (“MOU”) related to the subject site. Both Adams County and Ward Petroleum recognized that state law, rules, and regulations could change after the signing of the MOU.<sup>1</sup> Thus, the following language was added into the MOU:

*The Parties recognize that pursuant to the Colorado Oil and Gas Conservation Act, C.R.S. 34-60-101, et seq. (“Act”), the COGCC regulates the development and production of oil and gas resources in Colorado, and the Act authorizes the COGCC to adopt statewide rules and regulations. The provisions of this MOU are intended to supplement and add to the COGCC’s rules and regulations and not to replace such rules and regulations. **To the extent that any of the provisions of this***

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<sup>1</sup> Great Western Oil and Gas Company (“Great Western”) later acquired the rights to the Ivey Site. We were advised by the County Attorney that this MOU applies to the Ivey Site. MOU, Provision 37.

***MOU are in conflict with the Act or COGCC rules and regulations, the stricter standards shall govern, of if neither is stricter, the COGCC rule or regulation shall apply.***

MOU, Provision 1. The MOU also indicates that the parties also must negotiate to update the MOU if “there is a new development in state law, rules or judicial decisions that substantially affect any provisions of this MOU...” *Id.* at Provision 29. Great Western has used this MOU to secure Forms 2 and 2A from the Colorado Oil and Gas Commission (“COGCC”) and from the county, respectively.

As the Commission is aware, there has been a substantial change in state law and COGCC rules since the 2015 signing of the MOU. First, on April 16, 2019, Governor Jared S. Polis signed SB 19-181 into law, which went into effect immediately. The change in law resulted in a seismic shift on how local and state government regulate oil and gas operations, which included a new legislative declaration and substantial regulatory powers given to local government over oil and gas surface impacts. Here are some examples of the sweeping changes:

Pre-SB 19-181	Post-SB 19-181
<p>§ 34-60-102 - Legislative Declaration:</p> <p>(1)(a) It is declared to be in the public interest to:</p> <p style="padding-left: 40px;">(I) Foster the responsible, balanced development, production, and utilization of the natural resources of oil and gas in the state of Colorado in a manner consistent with protection of public health, safety, and welfare, including protection of the environment and wildlife resources.</p> <p>(b) It is not the intent nor the purpose of this article to require or permit the proration or distribution of the production of oil and gas among the fields and pools of Colorado on the basis of market demand. It is the intent and purpose of this article to permit each oil and gas pool in Colorado to produce up to its maximum efficient rate of production, subject to the prevention of waste, consistent with the protection of health, safety, welfare, including protection of the environment and wildlife resources, and subject further to the enforcement and protection of the coequal and correlative rights of the owners and producers of the common source of oil and</p>	<p>§ 34-60-102 – Legislative Declaration</p> <p>(1)(a) It is declared to be in the public interest and the commission is directed to:</p> <p style="padding-left: 40px;">(I) Regulate the development and production of the natural resources of oil and gas in the state of Colorado <b>in a manner that protects</b> public health, safety, and welfare, including protection of the environment and wildlife resources.</p> <p>(b) It is neither the intent nor the purpose of this article 60 to require or permit the proration or distribution of the production of oil and gas among the fields and pools of Colorado on the basis of market demand. It is the intent and purpose of this article 60 to permit each oil and gas pool in Colorado to produce up to its maximum efficient rate of production, subject to the protection of health, safety, welfare, including protection of the environment and wildlife resources and the prevention of waste as set forth in section 34-60-106 (2.5) and (3)(a), and subject further to the enforcement and protection of the coequal and correlative rights of the owners and producers of a common source of</p>

<p>gas, so that each common owner and producer may obtain a just and equitable share of production therefrom.</p>	<p>oil and gas, so that each common owner and produce may obtain a just and equitable share of production from the common source.</p>
<p>§ 29-20-104 – Power of local governments</p> <p>(1)(h) Otherwise planning for and regulating the use of land so as to provide planned and orderly use of land and protection of the environment in a manner consistent with constitutional rights.</p> <p>Subsections (1)(h)(I)-(VI) and (2)(a)-(c) did not exist.</p>	<p>§ 29-20-104 – Power of local governments</p> <p>(1)(h) Regulating the surface impacts of oil and gas operations in a reasonable manner to address matters specified in this subsection (1)(h) and to protect and minimize adverse impacts to public health, safety, and welfare and the environment. Nothing in this subsection (1)(h) is intended to alter, expand, or diminish the authority of local governments to regulate air quality under section 25-7-128. For purposes of this subsection (1)(h), “Minimize adverse impacts” means, to the extent necessary and reasonable, to protect public health, safety, and welfare and the environment by avoiding adverse impacts from oil and gas operations and minimize and mitigating the extent and severity of those impacts that cannot be avoided. The following matters are covered by this subsection (1)(h):</p> <ul style="list-style-type: none"> <li>(I) Land use;</li> <li>(II) The location and siting of oil and gas facilities and oil and gas locations, as those terms are defined in section 34-60-103(6.2) and (6.4);</li> <li>(III) Impacts to public facilities and services;</li> <li>(IV) Water quality and source, noise, vibration, odor, light, dust, air emissions and air quality, land disturbance, reclamation procedures, cultural resources, emergency preparedness and coordination with first responders, security, and traffic and transportation impacts;</li> <li>(V) Financial securities, indemnification, and insurance as appropriate to ensure compliance with the regulations of local government; and</li> <li>(VI) All other nuisance-type effects of</li> </ul>

	<p>oil and gas development; and</p> <p>(i) Otherwise planning and orderly use of land and protection of the environment in a manner consistent with constitutional rights.</p> <p>(2) To implement the powers and authority granted in subsection (1)(h) of this section, a local government within its respective jurisdiction has the authority to:</p> <p>(a) Inspect all facilities subject to local government regulation;</p> <p>(b) Impose fines for leaks spills, and emissions; and</p> <p>(c) Impose fees on operators or owners to cover the reasonably foreseeable direct and indirect costs of permitting and regulation and the costs of any monitoring and inspection program necessary to address the impacts of development and enforce local governmental requirements.</p>
<p>34-60-103 – Definitions</p> <p>Within the definition of “Waste”, (11)(b), (12)(b), or (13)(b) did not exist.</p>	<p>34-60-103 – Definitions</p> <p>(11) “Waste”, as applied to gas:</p> <p>(b) Does not include the nonproduction of gas from a formation if necessary to protect public health, safety, and welfare, the environment, or wildlife resources as determined by the Commission.</p> <p>(12) “Waste”, as applied to oil:</p> <p>(b) Does not include the nonproduction of oil from a formation if necessary to protect public health, safety, and welfare, the environment, or wildlife resources as determined by the Commission.</p> <p>(13) “Waste”, in addition to the meanings as set forth in subsections (11) and (12) of this section:</p> <p>(b) Does not include the nonproduction of oil</p>

	or gas from a formation if necessary to protect public health, safety, and welfare, the environment, or wildlife resources as determined by the Commission.
§ 34-60-131 did not exist.	§ 34-60-131 – No land use preemption  Local governments and state agencies, including the Commission and agencies listed in section 34-60-105(1)(b), have regulatory authority over oil and gas development, including as specified in section 34-60-105(1)(6). <i>A local government’s regulations may be more protective or stricter than state requirements.</i>

New sections of the Act also include, among other things, emissions regulations, cumulative impacts analysis, and financial assurances. §§ 25-7-109; 34-60-106(11)(c)(II); and 34-60-106(13). As part of its statutory obligations under SB 19-181, the COGCC was required to engage in rulemaking to ensure that COGCC’s rules are protective of public health, safety, and welfare, including protection of the environment and wildlife.

Mission Change Rulemaking 200-600 started in January-February 2020 with the Strawdog rules. After months of work, on September 28, 2020, the COGCC conducted a “preliminary final vote” of the 200-600 Series Rules, which was characterized as a “substantive approval of the rules.”<sup>2</sup> Of particular note, the COGCC passed rules involving disproportionately impacted communities (Series Rule 100 - Definitions); local government siting regulations (Series Rule 302); cumulative impacts data evaluation (Series Rule 303); alternative location analysis (Series Rule 304); and establishing setbacks and siting requirements (Series Rule 604).<sup>3</sup> In addition to the 200-600 Series Rules, the COGCC also established rules for Series 800, 900, and 1200. We would like to highlight the public importance of those rules related to venting and flaring (Series Rule 903).<sup>4</sup>

SB 19-181 and the new rules established through rulemaking are stricter than the laws and rules that existed at the time the MOU was signed. Thus, keeping in mind that the MOU specifically states that the “strictest standard shall govern,” and Great Western and Adams County are obligated to update the MOU if there is a substantial change in the law, it is a wonder why the Ivey Site project is being allowed to continue.<sup>5</sup> According to the July 3, 2018 Form 2A submitted by Great Western, the nearest buildings are within 1,500 feet of the nearest buildings. Also, the Form 2A fails to take into account cumulative impacts or venting and flaring. The

<sup>2</sup> <https://www.youtube.com/watch?v=TXt77rsg0SU>, at 1:38:15.

<sup>3</sup> The COGCC established a minimum 2,000 foot setback as measured from the edge of a wellpad.

<sup>4</sup> As indicated by the Commission, these rules set a regulatory floor. Local governments are not allowed to go below this floor, but are allowed to establish surface impact rules that are stricter or more protective than state regulations. § 34-60-131.

<sup>5</sup> The word “shall” in a contract mandates that an action be done. See *Brock v. Weidner*, 93 P.3d 576, 580 (Colo. App. 2004) (holding that the word “shall” in a contract mandated that attorney’s fees be awarded to the prevailing party); *RCS Lumber Co. v. Sanchez*, 316 P.2d 1045, 1047 (Colo. 1957) (the word “shall” in a contract denotes mandatory compliance). As such, the Commission does not have discretion to decide if stricter standards will be applied; it is obligated to ensure that the stricter standards apply.

strictest standards would not allow this project to exist, and it is Adams County's obligation to ensure that the strictest standards are enforced.

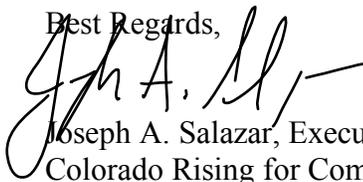
As such, we insist that Adams County stop the Ivey Site project, and begin the process to ensure that the strictest standards are applied. Since Great Western has not started drilling, Adams County can certainly require that the siting of the operation occur at least 2,000 feet away from buildings as measured from the edge of the well pad; require that Great Western conduct an alternative location analysis; require that Great Western conduct a cumulative impacts analysis; and require that Great Western provide plans related to its venting, flaring, and emissions. This is not an exhaustive list, but highlights some of the stricter standards that have passed since the signing of the MOU.

Commissioners, many of you campaigned on protecting the community from the adverse impacts of oil and gas development. Prior to 2019, we understand that you were substantially limited on how a local government could regulate oil and gas operations. After passage of SB 19-181, your hands have been freed to ensure that the strictest standards will be enforced. The floor established by the COGCC through rulemaking provides you the legal authority you need to enforce the strictest standards.

As we indicated earlier, the MOU mandates your enforcement of the strictest standards. Your failure to act will have an adverse impact on community members' statutory and constitutional rights. In such a situation, if the Board of County Commissioners is unwilling to protect the community under the strictest standards, the community will have no other choice but to protect itself from Great Western and from its own county government.

Accordingly, because time is of the essence, please advise if the Board of County Commissioners is willing to halt the Ivey Site project, and if it is willing to begin the process to ensure that the strictest standards will be applied to this project. We pray for your response on or before the close of business on **Wednesday, December 23, 2020**. In the interim, should you have any questions or comments, please contact Joe Salazar at (303) 895-7044. Thank you for your time and attention.

Best Regards,



Joseph A. Salazar, Executive Director  
Colorado Rising for Communities

Sara Loflin, Executive Director  
League of Oil and Gas Impacted Coloradans (LOGIC)

Suzanne Cabral, Founding Member  
Front Range Residents for Environment Safety and Health (FRRESH)

Suzie Brundage, Impacted Adams County Resident  
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