

Public Lands Coordination Commission

Meeting Minutes March 15, 2011

Commissioners present: Drew Gordanier, Frank Green, Zane Odell, Dennis Atwater, Rob Yates, Matt Clark,

Commissioners present: Gerald Koppenhafer

Approximately 2 citizens, Tom Rice from the Forest Service, Jim Felton from Bill Barrett Corp., Karen Spray from COGCC, Josh Joswick from the San Juan Citizens Alliance, Montezuma County Planning Director Susan Carver two Planning Commission Members were also present.

6:35 PM Meeting was called to order.

The Pledge of Allegiance was recited & ground rules established.

First Item of business was approval of agenda & minutes. Agenda & Minutes were approved noting Frank Green's name was repeated in the role.

Karen Spray from the Colorado Oil and Gas Coordination Commission (COGCC) was introduced.

Karen Spray is the Regional Environmental Protection Specialist. Based in Durango Colorado.

Karen distributed the COGCC excerpts from rule 513 that defines what a Geographic area plan is according to State Rules. (see Attachment A)

Karen also distributed the Staff recommendation from Jan. 2011 on the GAP plan for this area. (see Attachment B)

Karen reported that basically a GAP is a rule making process. That enables the COGCC to look at overall regional scale geographic areas. It can extend beyond a basin, it can be multiple operators and is supposed be applying an assessment or plan that would extend up to ten years into the future. It is a rule making procedure so it would be something done through stakeholder involvement. It requires the COGCC to consult with other local agencies local government, planning groups etc. The intent when the rule was put forth was to look at areas like Garfield County where we have 32 wells on a pad and up to six different operators even sharing a single pad. We were trying to give the COGCC a tool that they could enact to give them rule making ability to manage that large scale of a process. There are no Gaps active in the state and we are not actively pursuing any.

Karen went on in summary to say that regarding the Jan. 12 memo, the San Juan Citizens Alliance came before the Board at a hearing in Denver and requested that the Gothic Shale Play be put in a Gap plan. It went under advisement to our staff and based on workload, the lack of permitting and drilling activity in this area right now...resources have been allocated to other parts of the state...we have a very hot and heavy play up

on the Niobrara up on the Wyoming border which a lot of our resources are being directed towards so... the decision was made by the COGCC not to pursue a GAP plan at this time. But because we are not doing one now does not mean we would not do one in the future... it does not preclude it from being done once activity picks up.. but we haven't had a single application for a Gothic Shale well in Montezuma County in over a year.

Zane Odell asked if it was all Bill Barrett ?

Karen responded that it was at this point but Black Resources have a couple on the floor. We are not seeing a lot of activity down here right now there is one well drilled for the gothic last year one the previous year. We have 27 permits pulled in Montezuma County of those only 8 have been drilled. 13 permits have expired and in order for those wells to be drilled they would have to reapply or resubmit those applications to the COGCC and they would be taken back under consideration under the new rules. There are 5 where permits exist in t Montezuma County that have an expiration date of 2012 that could potentially be drilled between now and mid 2012. It is very low drilling activity it is less than 1% of all the activity in the sate right now. The intent is to use resources elsewhere. We are trying to get the most bang-for-the-buck considering state budgets. We are pursuing groundwater baseline sampling in this region. That study has been initiated. We have identified primitive water wells in Montezuma and Dolores Counties and hope to do voluntary sampling this summer.

Matt Clark asked it the upcoming SEIS Supplement would affect this at all?

Karen responded no... because that is all on Federal Properties and ours would encompass the Basin. If you do a Geographic plan it includes private lands. If you look at the rule it doesn't define what is in the plan. The San Juan Citizens Alliance has put together what they would consider to be a plan...essentially a template for the types of studies that would be involved. They are very heavy on the air quality and things of that sort. There is no template...no rule...no guide yet as to how all of these are going to look all of these are choreographed to a specific region and the specific concerns addressed with that region.

Rob Yates asked if Gap Plans are County Specific and Karen responded no.

Rob Yates asked if the BOCC would be the ones to implement GAP Plans.

Karen Responded no this would be a State implemented rule making process it would involve other agencies and it would involve the Department of Public Health and environment and it would involve the CDOW and Local Government.

We do not have a Geographic Area Plan in Place in any location in the state right now it is a new rule from 2009. Right about the time the rule went into effect the industry tapered off quite a bit.

Matt Clark asked if Karen was aware of other areas in the west that had plans like this ?

Karen responded that she was not aware of any. It's a new process and we did it during our last rule making because of the large scale growth we were experiencing. Now its there for us to use a s a tool when we see a lot of growth occurring...over lapping growth

with multiple operators in a given region where you might extend beyond a county boundary but the actual reservoir or basin you are looking at is a much larger scale...so you get a master plan. The intent would also be to incorporate County Planning rule and things of that sort so it is very, very large scale. Some of the concerns at the County level even at the small scale... those can be addressed on a basin wide order. The San Juan Basin Ignacio Field...where we had water quality concerns...we did Basin wide orders requiring sampling by operators there... that's not a rule making process that is much simpler process through our hearings that can be done on a basing by basin basis. So something that needs to be addressed locally can be addressed at a lower level of regulatory and agency workload.

Josh Joswick with the San Juan Citizens Alliance brought forward information from his organization.

Josh distributed some information (See attachment C)...including an excerpt from COGCC.

Josh gave some background on how all of this came up. Back in 2009 the COGCC did road trips to hold monthly meetings and there was a meeting in Pagosa. At that time I went over and asked to have the COGCC do some water testing in response to people in Montezuma County that had concerns. When I brought that up Dave Neslin, Director of COGCC said yes we could do that and it sounds like an area we need to do a Geographic Area Plan for. I hadn't thought to ask for that but I thought that sounded good. So I let it go for a while and then made contact with the COGCC to follow up on that. That led to making a presentation at the Denver meeting to talk about why it should be done. We had good discussion as to why it should or shouldn't be done. The bottom line on that was that the COGCC Commission itself generally supported the idea of doing a GAP plan but said they first wanted to prioritize what they were going to ask their staff to do...because of the workload. Then the other thing was that while the rule said that GAP plans could be done there wasn't anything in the rule defining what a GAP Plan is. So they needed to figure out exactly what they were going to be doing before they said they were going to do one. At that meeting I volunteered to come up with some ideas and do a template. So within that context I worked up areas that I thought would be good to have in a plan. The other position that we took on the matter is that now is a good time to do something like that before the development starts rather than after. I have been dealing with Coal bed Methane development in La Plata County for 20 years and there were good things and bad things about it. If they had done a plan to start with they may have been able to head off some of the problems before they arose but they didn't so they had to play catch up which was pretty costly in some areas. The point is that it makes sense to study it before you do it. I was saying this isn't a bad idea to do it now... so say development starts over here on a big scale .. and you have staff then that is going to be processing permits and you want the same staff that is up to their eyeballs in processing permits to work on a plan too. So it seems like a good idea to try and do it now. The other side of that is just what was brought up back in January which was that the time isn't right for it because there is no activity going on down there. They used the reverse argument. I agree with what Karen said which is that there is nothing from the COGCC that says this is a bad idea we are not going to do it...they are more -or- less just saying this is not the time to do it. So OK ... I can go along with that...but I still think that the idea of doing something like this would serve the community well. And what you were saying about the SEIS... the Forest Service or BLM one...this would provide opportunity for the two to cooperate because they will be dealing with the same things

but private lands and federal lands as well. Karen was right that we did say there should be a study of the air quality and the ozone and what it would require to mitigate it. And it is true this would require a rule making...would that preclude development?...and that is a good discussion to have. In my experience rule making does not preclude development. We have had rules in La Plata County where the County developed its own oil and gas regulations back in 1991. We have had a lot of development over there under those rules. Nobody went away...yet we had these rules that were able to actually work for a lot of the landowners over there because of the split estate situation. I think that just because you have rules doesn't mean they will stop development. It was air quality and the water and flow back fluids we are concerned about. There is a term...Naturally Occurring Radioactive Material NORM. that was one of the things that I thought would be good to understand more about what would happen because of this. In the Packet I gave out I included some things that were from various other shale formations the Marcellus Shale is that big play back in Pennsylvania and New York and Ohio. It's a big Play. What they are finding in terms of the interaction between fracking and uranium...and the chemical bonding between the production waters after it is extracted. Shale formations are different that coalbed methane because in the shale formations you are putting water into the formations for the fracking and then drawing it out and what they are finding is that there is a chemical interaction in which the NORMS are bonding with the fracking chemicals in the water. In the Ft Worth area of Texas they are finding the same sorts of thing. I have read these things and I think that is why it is important to have an assessment before you start to do the productions... what are you going to do...first of all you need to assess...maybe there will not be the same reaction...maybe there will be...maybe there will be more...but that is something that I think would be valuable to assess before you go in and start doing the production. And...once again my experience has shown that it is more costly to clean it up than to do it right in the first place...I think BP can attest to that. That is where I would look at the need for doing a GAP. I still think it's a good idea. But I understand where COGCC is hit with budgetary constraints like all of the State Offices are. They have to prioritize what they are going to do... are they going to continue on with the rule making they started back in 2008 and work on set backs from residences and riparian areas and reclamation or are they going to do this? The GAP plan would also include whatever local government Comprehensive Plans there are...so if the county has some requirements or think that something could be gained from doing a study then local government can be included in that...but the local government would not have to pay for it.

Frank Green asked how long it would take to get a GAP plan put together.

Karen Spray responded we don't know because we have not done one before. If you look at the format that Josh put together it would be an expensive piece of time. It would probably be a couple year process to do the air and water studies...realistically...working within the State budget...we are a governmental agency and we don't move fast.

Rob Yates asked what do BP and Williams think about a GAP plan/? It must have been suggested in La Plata County.

Josh Responded that no it wasn't because in my mind the idea of a Gap...and I think that is what the rule calls for... is to go into an area before you drill the formation. You do a GAP at the beginning part of the development. Over there they have been doing it for over 20 years. It is a different situation over there because you have the state with their

rules the county with their rules but you also have the Feds that have their rules and the tribe that have their rules.

Rob Yates added... so now you want another rule?

Josh responded... no that's what I'm saying it is too late over there for a GAP... but is a different circumstance over here. At the time over there... there was nothing like this so we asked for an EIS...but because of what I was saying state, feds, tribe no one would take the lead in it because nobody knew how to go about it...there had never been that kind of intergovernmental cooperation...for doing something like an EIS. But by now there would be no point in doing something like a GAP because of the age of the field.

Matt Clark added that this play was covering State Federal and Private Land here too. But was there any tribal land?

Josh added that he had not heard of any tribal land in the play.

Karen added that there was also a porous boundary over there but it is different here.

Matt Clark asked how the GAP would work with the SEIS the Forest Service and BLM were doing?

Karen responded that the COGCC would be focused on the private lands and if there was an SEIS that had additional data it would be used to supplement the GAP but we would not have to duplicate the work. She furthered that it was not the intention of the COGCC to close the doors on a GAP plan it was just economic reality. She added that the groundwater study was still moving forward.

Drew Gordanier asked if the COGCC was going to do the water study rather than have a contractor do it.

Karen responded that yes they would try to get a baseline groundwater investigation.

Dennis Atwater asked what is your take on rules vs. development?

Karen responded that it depends upon the rule. If the rule is very restrictive it could preclude development but if it is not very specific... A GAP plan is very broad then the only way it would preclude development is if you said you can't develop until the GAP plan is done. Since we have never done one we don't really know...it could be very broad or it could be very low impact if it gets very prescriptive and things get screwed down it could be very restrictive we don't know at this point. The rule making process is sometimes long.

Dennis Atwater asked about the assessment during production accuracy being this is a big basin. When you do your assessment would the scope of that assessment provide an accurate reading?

Karen responded that one of the things... the recommendation of the staff have made... was that if you get too early into the development that you would get more speculation because you need holes down deep to gather the data. Without the down-hole data you would be doing some speculation as to what the data really means.

Matt Clark asked...If a Gap plan is not done what options are there for the county and citizens to have input into the process. One of the biggest concerns that I have heard is concern over water since the Dolores is pretty much tapped out and this shale takes a huge amount of water for the production. There is concern that it could take water from agriculture.

Karen responded that in the process both counties would stay involved. Every permit that comes before the COGCC is shared with the counties. The counties have the right to intercede on any permit they have a concern about and we have online electronic forms for the public. If it is a regional concern the county can go to the COGCC and request a study etc. When you are talking water quantity you are talking Division of Water Resources and the State Engineers Office. I do know that the operators down here are using water under private purchase. There will also be recycling of large amounts of that water. It is one of the things that we have under our rules is waste management planning. Operators will have to submit a plan on how that is going to be managed. The shale just takes much more water than the coals do. We try to encourage recycling and it is cost effective to reuse the water and when you talk about chemicals it will be the same form hole to hole so there is benefit to reusing it.

Jim Felton from Bill Barrett Corporation was invited forward for a report from the industry.

Jim began by reading a letter from the La Plata Energy Council. The letter was addressed to the COGCC and was in opposition to a GAP plan.

Jim went on.. as a Company that has spent a lot money down here for the last couple of years some things I would like to point out is... relative to a GAP what is in a GAP that a county can't or shouldn't already be doing...you have a use by review process...and I would contend after going through several of the hearings that it is pretty exacting. I think in many respects that having a GAP would either be redundant or sometimes conflicting with the County use by review process. Again I think everyone in the state that has encountered this acronym GAP really struggles with what value does it add to any stakeholder/...the county, the investor, the energy consumer. As Karen mentioned we are not drilling any wells this year. If you look at the criteria there... a GAP should serve in multiple subareas of drainages and should serve for a period of ten years or more...involving multiple operators... frankly that criteria applies more to the activities in La Plata County than it does Montezuma or Dolores. Because over there are multiple operators and they will probably operate for decades going forward. Why haven't we drilled any wells?... We are stymied...this thing has got us a little confused...we are having a hard time trying to comprehend the potential for this play. We see gas we just don't know how we can get it to flow at economical quantities. Along those lines we have taken a time out. Not a well drilled this year in the meantime we are going out looking for partners. We have tens and tens of millions of dollars into his thing and we don't know if we are going to be throwing good money after bad or not. When we get to that point we try to get somebody else's money. So we are out there looking for partners preferably somebody who has done this in some other places with more experience and new ideas to bring to the table. Along those lines to bring in a new partner would mean that they are going to be driving the boat a bit they will have a different idea or approach. So my point is what we have done in the past probably will not provide much of a template for what will be what this thing might look like going forward if we get a partner. Some of the new rules mentioned... the recycling of the water some of the closed loop

systems...I would contend that a GAP would restrain the flexibility on trying to mitigate impacts.

Matt Clark asked how so if there is no definition or outline for what a GAP actually is.

Jim responded that if a GAP were to say that you are going to operate just as this way in order to fulfill the terms of the GAP it would be tough to introduce new ideas that may minimize impacts. If you have...on top of the County...other agencies involved and you try to make any sort of amendment or new approach to something it will be cumbersome.

Matt responded...if you make a GAP too restrictive.

Jim further that by their very nature more agencies and more regulations will equate to more restrictive.

Jim went on. I have seen a bit of what Dolores and Montezuma Counties are doing with the bottom up economic model that our Governor is trying to implement. It seem that throughout the country...from president Obama on down you have people review what value would be added by regulations and their impact on economic growth and job creation. As Karen noted the current state of the COGCC makes it very difficult for them to provide value for the tax payer by looking at a GAP in a place where far less than 1% of the state's production is being generated and secondly is it really worth it to this area to be the guinea pig for a mechanism like this. When everyone else is trying to find ways to provide regulatory certainty and clarity that attracts capital.

Matt Clark added if there is a mechanism for the county to challenge or request a study on a case by case basis then you are not getting the certainty you get if things are planned out beforehand. You are saying that having a GAP will make things uncertain?

Jim responded that delay will repel investors.

Matt furthered that it seems like it would be even more uncertain if every single well that came up there was the ability to challenge or ask for studies etc. on each individual permit rather than to have a framework to move forward.

Jim responded... I follow your reasoning but experience does not reflect that.

Karen Spray added...with each application that comes in the counties, public can comment on that. They can on a well by well basis. If the county has a more specific concern on a broader scale they can take that independent concern before a board and express their concerns...which is how a lot things were done in La Plata County. As a result independent studies were done down there but were triggered by the county coming forward and asking for additional investigation. It wasn't under rulemaking.

Matt asked if those are still in place under a GAP plan?

Karen responded yes.

Jim Felton noted that this brings it back to the original question...is there something in the GAP that provides something to the county that the county can't, won't, doesn't want

to do for itself? And if the answer is yes is it worth then inviting in Denver to your local land use planning decisions. Remember there is not a lot of public mineral here. People are hanging on by the skin of their teeth trying to grow pinot beans and they have interest in this. Again either repelling capital or slowing the rate of investment it is like taking money out of their pocket...your neighbor, your school district. Here is an example we spent over 5 years and 3 million dollars to get an EIS conducted in Utah for a 60 year old field. This field had its first well drilled in 1950 and during that time the tax base for that County in Utah saw our production fall by 70% because of the delays going through the federal process and the appeals...the EIS had over 14 different consultants and is over 1000 pages long. And that is the mechanism by which we will be operating in the future. The five year that that took the production from us...the 3rd biggest taxpayer...fell 70%. Regulation has a cost and there is point at which regulation can make a play sub-economic.

Again is there something in this concept that fills a need that is not being met? If the answer is yes consider the cost of ceding that authority.

Nothing that grows, grows towards simplicity. Anything that grows, grows towards complexity.

Zane Odell opened the meeting to public comment.

Bob Clayton asked how the GAP would affect operations on BLM lands with many regulations and operated under a GADP plan already. Is this going to be stepping on toes?

Karen responded that it would not be the intent to have any toe stepping but rather to work with the other agencies but there are no guarantees when working between agencies. Realistically that is what happens. The Gothic Shale Play does extend onto federal lands and we don't have a model for how things will work.

A member of the public added that who is being left out is the private mineral / landowner. Barrett's operation is currently on private mineral. Last year I had 12,000 acres leased to Barrett and to have people from Durango coming over telling private mineral owners what to do leaves kind of a sour taste.

Karen added that under a GAP plan private mineral owners would have a seat at the table as well.

Fran Green asked if the GAP plans would primarily be concerned with private lands?

Karen responded yes it was the intent to f the GAP plans to cover areas that were not pulled into EISs and get into other studies.

Rob Yates asked who wrote the scope of the GAP?

Karen responded someone in Denver adding that all the stakeholders came to the rule making which included the full spectrum saw the language before it was enacted into rule.

Rob Yates noted that the industry obviously didn't request the rule making but that the San Juan Citizens Alliance certainly did.

Josh responded that they did not initiate it. Noting that there were two things that went into the rules. One was a Comprehensive development Plan and the other was a GAP. They are a little different but they accomplish the same thing because they would take a comprehensive view of the field what it would take to develop it and what the impacts would be. There was a lot of discussion in the rule making based on how to do cumulative impact analysis. A comprehensive development plan would be initiated by the operators and the Geographic Area Plan would be initiated by the COGCC.

Rob Yates added... I have a little bit of a problem with that in that it all comes back to our backyard. In my way of thinking our local government needs to control what happens within this county. I don't like to see more bureaucracy. Right now we are dealing with the Forest Service on some road issues where we don't have a lot of say. But this is dealing with private lands where we do. I would think that would rub a lot of people wrong where you have an agency coming in to oversee private land issues. That's why we elected our county commissioners. We also have a Planning Commission and I don't know of one well where they haven't come through the county process. I think if there is not a good process in place maybe this is a good tool to look at but as far as I know there is a good process in place.

The question was asked... what threshold is there for large scale development?

Josh responded that it would be the Gothic Shale formation or the Fruitland formation etc. Noting that there is a modified GAP proposed for Pinnacle Basin... which is interesting because it is a pretty well developed field.

Karen responded that it is a reduced scope GAP and that development vs. no development is a make or break. A lot of what the GAP was intended was to look at large scale long term management projected planning of how they will plan to develop their prospects and the incentive for an operator to do a comprehensive drilling program and to bring it forward is...ok here we are going to do 150 wells over five years and here is the general layout of how we are going to do it and the general sequence, this is how we are going to handle waste and we handle air quality. They bring it before us we approve it and it actually streamlines their permitting process. The GAP is baseline information and it is managing large scale development with multiple operators. That is what happened in the Pinnacle we have 32 well pads with 8 operators...waste coming and going with us trying to manage and choreograph how that tight of development with multiple operators works. It is really about the multiple layering of operators and how they do things differently.

Zane added that it looks like there would be less impact with fewer locations.

Karen responded yes we encourage that but the rules were written for one vertical well per pad and now we have now had to modify the rules to deal with multi well pads and large volumes of fluids etc. And now we have directional and horizontal drilling. We have tried to keep our rules broad and non prescriptive in nature. We have certain very prescriptive things but the intent has always been to let the Industry try new technologies that will lessen impacts to the environment. As things move forward if we tell them the only way you can do things is X then something new comes along that is truly better the

we have to go to rulemaking to change things to allow it. Rule making takes time. And it is an open public process. That is not to the benefit of anybody.

That is why we decided not to do a GAP for now.

Jim Felton added that industry has every business incentive to do it right the first time and they try to get better every time. You have a lot of pressure and observation why would you take a shortcut. We would get punished on many levels from wall street to main street people are going to jump you if you are a bad operator.

Josh added as far as the GAPCOGCC has had opportunity to discuss and analyze it and they reached their decision and I accept that. If at some point in time they decide they want to do it I would advocated for it. But for now it is what it is.

Dennis Atwater added that we have adequate protections in place for now and there is no reason to add complexity. I know that the more rule we have the less development we will see.

Meeting adjourned @ 8:30