

PHIL WEISER
Attorney General
NATALIE HANLON LEH
Chief Deputy Attorney General
JUNE TAYLOR
Chief Operating Officer
ERIC R. OLSON
Solicitor General



**STATE OF COLORADO
DEPARTMENT OF LAW**

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

**Natural Resources and
Environment Section**

July 22, 2019

VIA Electronic Mail ONLY

Mr. Bruce Barker, Esq.
Weld County Attorney
bbarker@co.weld.co.us

RE: *Senate Bill 19-181 and local government 1041 regulations*

Dear Mr. Barker:

This office represents the Colorado Oil and Gas Conservation Commission (“COGCC”), and we are providing these comments from the COGCC on its behalf. Because Weld County (“County”) is considering new oil and gas regulations following its designation of unincorporated Weld County as a mineral resource area of state interest, the COGCC recognizes the need to clarify the scope and breadth of its regulatory authority over oil and gas development. As set forth in SB19-181, the COGCC continues to have regulatory authority over oil and gas locations in unincorporated Weld County.

SB19-181 provides a framework for the COGCC to partner and work collaboratively with local governments to ensure efficient and effective regulation of oil and gas development to protect public health, safety, and welfare, and the environment and wildlife resources. Specifically, SB19-181 recognizes the ability of both the COGCC and local governments to regulate oil and gas operations in the state: “Local governments and state agencies, including the [COGCC] . . . , have regulatory authority over oil and gas development.” § 34-60-131. This builds on pre-existing law providing that state commissions, including the COGCC, may require permits for development in areas designated by local governments as areas of state interest. § 24-65.1-108.

While SB 19-181 provides local governments with siting authority over oil and gas surface locations, it does not diminish the COGCC’s authority to regulate the orderly development of oil and gas throughout the state. To the

contrary, SB19-181 reaffirms the critical role for the COGCC in numerous places.

Under SB19-181, the COGCC “is directed to regulate the development and production of the natural resources of oil and gas in the state of Colorado in a manner that protects public health, safety, and welfare.” § 34-60-102(1)(a)(I). To that end, SB19-181 maintains that the COGCC has “jurisdiction over all persons and property, public and private, necessary to enforce this article 60, the power to make and enforce rules and orders pursuant to this article 60, and to do whatever may reasonably be necessary to carry out this article 60.” § 34-60-105(1)(a). SB19-181 also provides that the COGCC “shall require . . . that no operations for the drilling of a well for oil and gas shall be commenced without first . . . obtaining a permit from the [COGCC], under rules prescribed by the [COGCC].” § 34-60-106(1)(f)(I)(B). In short, SB19-181 does not restrict, and in some ways expands, the COGCC’s long-standing authority to regulate oil and gas development in Colorado.

The COGCC is aware that the County believes that oil and gas locations in unincorporated Weld County will not require an approved Form 2A, Oil and Gas Location Assessment, from the COGCC. Under SB19-181, local governments may impose regulations that are “more protective or stricter than state requirements,” but they are not authorized to bypass the COGCC’s regulations. § 34-60-131. That principle applies in this case.

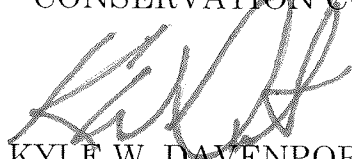
Pursuant to SB19-181, the COGCC will continue to require approved Form 2A and Form 2 permits in unincorporated Weld County. Doing so will ensure that the COGCC complies with its mandate under SB19-181 to “regulate oil and gas operations in a reasonable manner to protect and minimize adverse impacts to public health, safety, and welfare, the environment, and wildlife resources.” § 34-60-106(2.5)(a). In the County’s draft regulations, it states that where there are inconsistencies between the County’s regulations and the COGCC’s regulations, the County’s regulations would control. Weld County Draft Regulations, Sec. 21-5-40(B)(7). In order to ensure that all oil and gas development meets the requirements of SB19-181, the COGCC will continue to require compliance with its regulations even if its regulations are inconsistent with the County’s regulations.

The COGCC does not intend to interfere with the County’s promulgation of its own regulations regarding the siting of oil and gas locations. At the same time, the COGCC recognizes its obligation to regulate the oil and gas development to ensure the protection of health, safety, welfare, the environment and wildlife resources. Regulation of oil and gas development is most effective when the State and local governments work together, and the COGCC looks

forward to working with the County and other local governments in a manner that advances the goals of SB19-181.

Sincerely,

FOR THE COLORADO OIL AND GAS
CONSERVATION COMMISSION

A handwritten signature in black ink, appearing to read 'K. Davenport', is written over the printed name.

KYLE W. DAVENPORT
Senior Assistant Attorney General
Natural Resources & Environment Section
Attorney for the Colorado Oil and Gas
Conservation Commission

cc: COGCC Director Jeff Robbins
Commissioners of the COGCC