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COGA Position Brief
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HB18-1071 – Representative Joe Salazar
Regulate Oil & Gas Operations to Protect Public Safety
Placing in statute the sentiment of the Martinez Appeals Court Decision

Background:

The Martinez decision arose from a petition for rulemaking filed with the COGCC in November 2013. The petition sought a rule precluding the COGCC from issuing any drilling permits until “the best available science demonstrates, and an independent third party organization confirms, that drilling can occur in a manner that does not” impair the environment, impact human health, and contribute to climate change. After soliciting and receiving stakeholder comments, the COGCC denied the petition because the proposed rule mandated action that was beyond its authority under the Oil and Gas Conservation Act to balance the development of oil and gas resources and protecting public health and the environment. The COGCC argued it did not have authority to consider the petition because petitioners rejected this balancing and focused instead only on the environmental impacts of drilling. A district court agreed with the COGCC’s denial of the petition and its interpretation of the balancing test required under the Act.

Last year the Colorado Court of Appeals reversed the district court’s and the COGCC’ s decisions based on a novel interpretation of the Act. The Court rejected the historical balancing test and concluded that “the Act does not create a balancing test weighing safety and public health interests against development of oil and gas resources, but rather, the Act indicates that fostering balanced, nonwasteful development is in the public interest when that development is completed subject to the protection of public health, safety, and welfare, including protection of the environment and wildlife resources.”

Central to the Court of Appeal’s holding was its interpretation of 34-60-102(1)(a)(1) of the Act, in which the General Assembly declares it is in the public interest to “[f]oster 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.” (Emphasis in the original.)

The Court stated that this provision, and particularly the language it italicized, “does not indicate a balancing test but rather a condition that must be fulfilled” – namely, that all development, production

and use of natural resources must be accomplished to protect public health, safety and the environment without any regard for balancing this goal with the other mandates in the Act, such as the maximization of drilling, the protection of correlative rights, and the prevention of waste. The Court also stated that the word “balanced” in the provision only modified “development, production and utilization,” rather than the remaining language regarding public health and environment.

Reasons to Oppose:

- The Appeals Court decision and Rep. Salazar’s bill ignore the fact that the Oil and Gas Conservation Act has multiple goals that must be balanced by the COGCC. These goals are to permit each oil and gas pool to produce up to its maximum efficient rate of production, to prevent waste in the production process, protect correlative rights of owners and producers, and protect public health and the environment. These goals can only be achieved if all are considered, or balanced, by the COGCC. By ignoring these multiple goals in its decision, the Court considers the issue of balancing in a vacuum. Rep. Salazar’s bill would upset this important balance and reduce individual property rights that are protected by our Constitution.
- Colorado’s oil and natural gas industry has been through 12 rulemakings over the past six years, many to strengthen environmental and safety practices, with additional rulemakings on the horizon. There are no shortcuts for Colorado’s oil and natural gas industry. The COGCC and CDPHE serve as the state’s regulatory oversight agencies on the energy front, managing rules to protect our environment, our workforce, and our communities. The thorough health analysis performed and described by the CDPHE’s Health Assessment report released earlier this year validated the high air quality standards that the industry is held to. Furthermore, the industry’s comprehensive response to the state’s Notice to Operators requiring flowline testing across the state demonstrated the industry’s commitment to pipeline safety. The industry is always working to improve, and the data shows it is performing admirably.
- Rep. Salazar’s bill is an inappropriate dismissal of the separation of powers within our government. The Martinez case was appealed to the Colorado Supreme Court. On January 29th the State Colorado Supreme Court accepted this appeal. Until the Colorado Supreme Court makes a decision on this issue, any legislation preempting that process would be an affront to our democratic institutions. It is best to let the courts conduct their work, and to determine any legislative course after those decisions have been made.

PLEASE VOTE NO ON HB18-1071

About COGA

Founded in 1984, the Colorado Oil & Gas Association’s (COGA) mission is to foster and promote the beneficial, efficient, responsible and environmentally sound development, production and use of Colorado oil and natural gas. COGA is a nationally recognized trade association that aggressively promotes the expansion of Rocky Mountain natural gas markets, supply, and transportation infrastructure through its growing and diverse membership.