Selling Our Birth-Right for a Mess of Pottage

By Christopher M. Bailey

Apparently my predictions for the outcome of yesterday's BOCC meeting were accurate. Unfortunately for the residents of Elbert County, Commissioners Rowland and Schlegel approved and voted into law two seriously flawed documents.

The first document, the so-called *Administrative Review and MOU Process for Minor Oil and Gas Operations and Related Facilities*, should have been renamed the *Administrative Review and MOU Process for **All** Oil and Gas Operations and Related Facilities*, as it will become the process used to permit all oil and gas facilities in the county. The "loophole" that allows the CDS Director to permit a major facility as a minor facility was unequivocally reworded yesterday to read:

SECTION 27.3(B)2
Upon the written request by an Operator, a Major Facility application may be treated as a Minor Facility provided the proposed Major Facility impacts are of short duration and such impacts are quantifiable...

This section gives the CDS Director, with BOCC approval, the authority to permit any oil and gas facility without the knowledge, input, or oversight of the Planning Commission, and without significant public scrutiny. I have asked on numerous occasions for clarification of the terms "short duration" and "impacts are quantifiable"; none has been given. "Short duration" will inevitably mean "for the life of the facility", and "quantifiable" impacts will be arbitrarily determined by the CDS Director. The rewording of this section was contrary to the recommendations of the Planning Commission.

As for the supposed "more protective standard MOU":

We were told that the county would leverage this expedited administrative review process to create a Memorandum of Understanding that would include additional protective measures, necessary because the state's regulations do not adequately protect us. The approved MOU will include nothing more restrictive than state regulations. Of the thirty-nine distinct items listed in the MOU, twenty-two are irrelevant or not protective, ten are already required by the COGCC, three are already industry standard practices, two are already covered in the Section 27 language, and two should not be allowed. Open pits ***are allowed***. Spraying water on roads is allowed. Protective setbacks ***have been removed***.

Open pits (fresh water, reserve, and emergency) are allowed, even when an operator uses the COGCC-undefined practice of "closed-loop drilling". There is still significant confusion surrounding the definition of the term "fresh water"; apparently neither the CDS Director nor the county attorney were aware of the fact that the COGCC has not defined the term, even though they, at one point, referenced the fictitious COGCC definition in the proposed MOU. In another section of the proposed MOU, one of those two individuals inserted a completely arbitrary definition which stated that fresh water contains a total dissolved solids (TDS) content "less than or equal to 5000 mg/l". This is patently false. The U.S. E.P.A. secondary drinking water standard for fresh water is 500 mg/l TDS or less; the USGS lists water over 1000 mg/l TDS as brackish, meaning "not fresh water". Also, utilizing one set of criteria or one determinate, does not insure that water is "safe", i.e. fresh water. Further, a TDS concentration of 5000 mg/l would more likely be found in flow-back water or produced water. My concern here is relevant because the approved MOU references pit closure rules, rules which would be unnecessary per COGCC regulation if fresh water storage pits contained only fresh water.

The MOU expressly allows the spraying of "fresh water" on roads and land surfaces. Again, the lack of definition is a serious cause for concern. Inevitably, produced water will be sprayed on roads and land surfaces; because of the inherent problems with the MOU verbiage, operators could label produced water "fresh water". This would be an example of a county requirement being less stringent than the state regulation, which is illegal.

The MOU, as presented by the county attorney, included a mandatory setback requirement of one thousand feet. Immediately preceding the vote to approve, Commissioner Rowland decided to expressly reword the one thousand foot setback requirement, effectively removing the requirement entirely.

The spraying of roads and the allowance of open pits are significant issues for the residents of Elbert County. These two issues were listed as the number one and number two concerns, respectively, by residents attending the November 21st, 2013 Planning Commission meeting. Commissioners Rowland and Schlegel chose to ignore that community feedback, deferring instead to their own agenda.

To summarize, yesterday's BOCC approval effectively:

1) Eliminates Planning Commission oversight of oil and gas development
2) Places an incredible amount of autonomous authority in the hands of the CDS Director
3) Removes public scrutiny
4) Creates *more* danger for Elbert County residents via the seriously flawed MOU
5) Requires an operator to exchange nothing in the way of additional protective measures for a fast-tracked county permit

My hope is that after a few years of intense oil and gas development within the county, the assertions made here will prove to be false; I am betting they won't be. It is quite possible that the quantity and quality of our groundwater will be negatively impacted. As a good friend of mine stated after yesterday's meeting, "You can't drink 'I told you so'".

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