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July 21, 2020

VIA EMAIL – NO ORIGINAL TO FOLLOW

ATTN:
Arapahoe County Board of County Commissioners
Chuck Haskins – Manager, Engineering Services Division
Diane Kocis – Oil and Gas Specialist
Bryan Weimer – Director, Public Works and Development

RE: Further Comments on Arapahoe County's Draft Traffic Impact Study

Dear Arapahoe County Commissioners and Staff,

As a follow up to the joint comment submitted in November 2019 by the Colorado Oil & Gas Association ("COGA") and the American Petroleum Institute ("API"), COGA submits further comment below on the county's proposed oil and gas traffic impact fee ("TIF") study. We thank the county for the stakeholder meeting hosted by county staff on June 4 and for its attention to the issues addressed below. Please do not hesitate to reach out to COGA or our members with any questions you may have.

General Comment

COGA and its members understand the county's desire to keep its roads in good condition and are willing to contribute toward that goal. However, our members do not support a blanket fee based on a county-wide average of repair and maintenance costs. Instead, COGA members, consistent with state statute discussed below, support fees quantified to correspond to operators' specific impacts on the roads they actually use.

Admittedly, the best-case scenario presented in the TIF study is probably optimistic, as it is unlikely all facilities will be developed using all three pipelines. Conversely, COGA does not believe the worst-case scenario impact is as realistic or as defensible as FHU suggests, because while it is unlikely *all* facilities will use all three types of pipeline, most development will leverage the use of one or more pipeline types to some degree. COGA and industry contends it will be much closer to the best-case scenario than the worst-case scenario particularly if the county were to:

(1) Consider FHU's adoption of conservatively high trip numbers
(2) Exclude or reduce the contributions to the impact cost from those methods which may not meet the standard of the enabling statute

Doing so could reduce the worst-case impact cost by potentially as much as 80%.

While COGA appreciates Commissioners' decision to move forward with a modified fee, treating roto-paved roads as paved roads, COGA is still concerned with the fee and its implementation, and many of our concerns from our previous comment letter still stand.

<u>Conflict with State Statute</u>

By statute, local governments have the authority to levy road impact fees that occur within their jurisdiction, ranging from residential and commercial developments to oil and natural gas development. However, this authority is not unrestricted. Section 29-20-104.5(2)(a), C.R.S. provides, with emphasis added, that any impact fee must be established at, "a level **no greater than necessary** to defray such impacts **directly related to proposed development**. No impact fee or other similar development charge shall be imposed to remedy **any deficiency in capital facilities that exists without regard to the proposed development.**"

Costs such as improvement of roads with pre-existing deficiencies and multi-modal shoulder improvements cannot be recovered from the industry by the county under Colorado law. Rather, the assessed fee must be legal and equitable and "directly related" to actual oil and gas impacts. Moreover, any assessed fees collected from the industry may legally only be used to remedy impacts related to oil and gas activity. Arapahoe County states many of the above points on its website with a page dedicated to transportation impact fees.

Calculating a fee based on averages does not align with the mandates of the state statute as outlined above. If the county is looking to avoid reviewing individual traffic impact studies, as mentioned by staff during the June 4 stakeholder meeting, COGA suggests the county reassess the proposed fee to ensure it is equitable to an operator's specific impact.

<u>Trip Generation Assumptions</u>

When calculating trip generation during pad and well development, FHU uses an average number that was generated from seven different sources spanning seven years. This average number is not representative of the data provided by operators to FHU based on real traffic trips from industry in Colorado, and is 11%, or 357 trips, higher than industry actual. Additionally, FHU cites an average of 1,051 truck trips for "fracture water", whereas data provided by COGA cites zero truck trips.

Further, the DJ (Denver Julesburg) Basin is unique, and different than other areas that the study draws truck trip data from. Using data associated with other basins in the United States skews actual Colorado operator road impact. Other basins generate different amounts of produced water, access to fresh water is different, and methods to access the minerals could be different as well. In general, using out of state data does not produce an accurate picture specific to Colorado. COGA strongly recommends reaching out to current operators in Arapahoe County for truck trip data that is representative of actual operations in the county.

<u>Accountability of Fees Paid</u>

If fees are to be paid to Arapahoe County for the purpose of road maintenance, COGA suggests the county implement a system to publicly disclose to the operator how those funds were used.

Specifically, if there are two operators in the West district, operators X and Y, operator X should be able to see that their impact dollars are not being used to pay for the impacts of operator Y.

Further, per §29-1-803(1), C.R.S., "At least once annually, the local government shall publish on its official website, if any, in a clear, concise, and user-friendly format information detailing the allocation by dollar amount of each land development charge [i.e. impact fee] collected to an account or among accounts, the average annual interest rate on each account, and the total amount disbursed from each account, during the local government's most recent fiscal year." If a system as outlined in statute cannot be reasonably implemented, COGA suggests that some form of system be put in place for operators to know how their fee dollars are spent.

COGA also suggests a phased payment structure, allowing an operator to pay the impact fee as they drill the wells, rather than assuming the cost of a fully developed pad upfront. An operator may permit a 20 well pad but, in the end, may only drill 15 of them. This method would align with the state statutes and help create a fee that is representative of an operator's actual impact.

Ad-Valorem Tax Contributions

While the oil and natural gas industry understands the need to help defray impact costs, the industry already contributes a significant amount to the county via the collection of ad valorem taxes and some severance tax. These tax dollars are realized approximately two years after payment to the county and should be considered in this process. We feel it is important for the Board of County Commissioners to consider these contributions as they evaluate if they should adopt an impact fee, and if so, at what level.

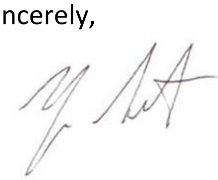
The total amount of revenue the county will receive as a benefit from this activity is more than an order of magnitude higher than what the likely impacts to county infrastructure will be, and the road and bridge fund contributions could be significant.

Summary

The oil and gas industry understands the county's need to maintain safe roads. COGA believes that the state statutes also support this. A process can be implemented that is in line with the statutes and meets Arapahoe County's needs.

If there is any further information that COGA and its members can provide to help facilitate this process or to help improve the accuracy of the study, please do not hesitate to contact us and we would be happy to assist. COGA and our members are grateful for the opportunity to provide further comment on this process.

Sincerely,



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