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January 11, 2019

Bryan D. Weimer, PWLF
Arapahoe County Public Works and Development
Lima Plaza
6924 S. Lima St.
Centennial Colorado, 80112

VIA Email – No Original to Follow

RE: Arapahoe County Proposed Traffic Impact Fee Study

Dear Arapahoe County Commissioners and Staff,

The Colorado Oil and Gas Association (COGA) respectfully submits the following comments regarding Arapahoe County's proposed traffic impact fee study ("TIF Study"). COGA is grateful for the opportunity to work with the County on this study and provide feedback during this stakeholder process.

COGA is a trade organization that represents approximately 300 companies throughout the state of Colorado, encompassing the entire value chain of the oil and natural gas industry. For over 30 years, COGA has fostered and promoted the beneficial, efficient, and environmentally sound development, production, and use of Colorado's oil and natural gas resources. COGA provides a positive, proactive voice for the oil and natural gas industry in Colorado and diligently promotes the expansion of Rocky Mountain natural gas markets, supply, and transportation infrastructure.

COGA understands that oil and gas development in Arapahoe County and surrounding areas impact roads and agree with the County that our industry should pay the fair, proportionate amount of our impacts. A well-maintained infrastructure benefits both the oil and natural gas industry and the County. The following comments address seven (7) areas of concern with the TIF Study:

- legal applicability and pre-existing conditions,
- methods used in the study,
- ad valorem tax and other sources of revenue,
- resiliency modulus calculation,
- pipeline discounts, and
- independent traffic study option.

As stated above, COGA appreciates the opportunity to provide comments on this study and will continue to engage with our membership and the County to reach a fee solution that sufficiently addresses oil and gas impacts on Arapahoe County Roads.

Legal Applicability and Pre-Existing Conditions

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 unfettered. C.R.S. 29-20-104.5(2)(a) states 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**." **[Emphasis added].**

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.

Methods Used in the Study

In order to ensure transparency between the County and industry, COGA asks that the County further elaborate and clarify the below items:

Well Pad Spacing and Well Counts:

The method and assumptions used to calculate the well pad spacing and well counts as they are anticipated to occur over the study's 10-year horizon are flawed. In particular, COGA believes that the estimated pace of development employed in the study is inaccurate. If the County insists on keeping a 10-year build out assumption (i.e., that all of the available acreage and sites for oil and gas development in the County will be developed in 10 years), it should also incorporate/apply a form of sensitivity analysis to this calculation to evaluate what the impact may be if the County does not experience this level of development activity over the 10-year timeframe. COGA asserts that the study should also present findings assuming a more reasonable pace of development occurs, e.g. only 25 to 50% of pads will be developed in 10 years, not 100%, as alluded to by FHU's initial study assumptions.

Trip Generation Assumptions:

Our understanding is that the TIF study will rely on a compilation of industry average trip estimates that FHU has assembled. The consensus from our operators is that these numbers may not accurately represent, and may be over-estimating, the actual expectations for development activity in Arapahoe County. At minimum, the County should ensure FHU reviews and considers the actual trip generation estimates that operators have been providing in support of their AUSR development applications in recent years. Reliance on these recent, Arapahoe County-specific trip generation estimates will offer a more accurate representation of actual traffic that can be expected. COGA and industry will commit to help the County aggregate, review, and summarize the specific trip assumptions FHU develops for the different pipeline development scenarios.

Expediting Reconstruction of Roads:

The study's assumption that expedited reconstruction of poor condition roads will be necessary because of oil and gas development traffic implies that the study will derive and attribute impacts to industry that are contrary to what is allowed by the statute. This assumption presumes that industry will be solely responsible for fixing roads that are currently in poor condition. As stated above, requiring industry to pay to remedy pre-existing conditions is contrary to statute. For example, the burden of improving a road that has a current Pavement Condition Index (PCI) rating of "poor" should not be fully attributed to oil and gas, as this would be charging a fee to address pre-existing conditions. If the TIF study and County determines that upgrades or repairs to existing infrastructure are necessary to mitigate pre-existing conditions and accommodate oil and gas traffic, then industry should only be responsible for the benefit they will realize from the County's decision to make these improvements. For paved roads, we anticipate this can be addressed by comparing the ratio of any projected industry ESALs that will be applied, to the reconstructed (or newly constructed) design-life ESALs of any improvement made. This calculation should appropriately determine the proportional cost that industry should be responsible for paying.

Multimodal Safety Improvements:

Due to the increased traffic along some County roadways, COGA understands that certain improvements may need to be made, such shoulder widening and adding bike lanes. However, the costs of these improvements need to be proportional to industry's use of the roads. And any calculation of industry's road usage must take into account the fact that this usage will substantially decline after the construction phase of a well pad. If shoulder improvement costs are programmed into the fees, the amounts should be based on the proportional vehicle lane miles traveled during the production phase, and the amounts should be variable depending on the type of pipelines used to facilitate production.

Ad Valorem Taxes and Other Sources of Revenue

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 severance tax dollars. Ad valorem taxes, or property taxes, often contribute a significant amount of money to the County, some of which is allocated to the County's existing road and bridge fund. Severance taxes are also collected by the County from oil and natural gas production, though at lesser amounts than are provided through ad valorem taxes. Below is an estimate of funds received by the County for one future horizontal well.

Tax Estimate for ONE Future Horizonal Well
Analysis as of 1/10/19 - Life of Well

Unincorporated Arapahoe County

Code	Taxing Authority	Levy	Tax Amount	
901	Bennett School Dist # 29	32.296	$ 508,662	*Schools*
2998	Arapahoe County	13.301	$ 209,491	*Arapahoe County*
2999	Developmental Disability	1	$ 15,750	
4012	Arapahoe County L.E.A.	4.982	$ 78,467	
4026	Arapahoe Library District	5.845	$ 92,059	
4060	Bennett Fire Protection	13.012	$ 204,939	*Fire*
4712	Urban Drainage & Flood	0.726	$ 11,435	
4713	Urbn Drnge&Fld (S Platte)	0.094	$ 1,481	
4744	W. Arap. Conservation Dis	0	$ -	
	Total:	**71.256**	$ 1,122,282	*

* 80% of the tax is expected to be paid in the first 5 years of the well production

COGA and its members will commit to help the County determine current and future ad valorem payments by the industry. We understand that the industry already contributes to the County's road and bridge fund, and these sums should be used to defray any projected industry fees estimated by this TIF study.

According to a report FHU prepared for the Colorado Department of Transportation (CDOT), there are several other funding mechanisms that counties take advantage of for road maintenance. Specifically, the County can look at state fuel use taxes, and severance taxes. The Department of Local Affairs also allocates money to local governments impacted by mineral extraction activities for public facilities and public services.

Resilient Modulus Assumption

The 3,500 psi Resilient Modulus (M_R) value used in the study to estimate the cost of pavement design is alarmingly low. By using such a low M_R value in pavement design equations, the study substantially overstates the asphalt overlay (thickness) needed to support anticipated truck loading. Although this may seem like a minor factor in the overall analysis, attributing the soil resiliency to that of swampland greatly increases the cost of asphalt overlay. It is highly unlikely that the average soil type in Arapahoe County consists of swampland.

Based on previous traffic studies done by consultants in the same geographical area, COGA suggests the County use M_R value of at least 10,000 psi, which is much more defensible and representative of the soil in the area. Further, this will likely reduce the costs associated with any asphalt overlay methods by approximately 50%.

Pipeline Discounts

COGA is aligned with API/CPC regarding the need for clarification regarding proposed fee discounts for the use of pipelines in the instance of future use and installation. While it is understandable that the County would like to receive money for projected costs upfront, the construction and completion processes of a well pad are variable. It may not be technically feasible to install a pipeline at the start of development or right-of-way acquisition and construction timing may pose an issue. COGA requests that a mechanism be put in place to allow a discount, or refund, of paid impact fees should an operator decide to install pipelines after the initial fee is assessed.

Independent Traffic Study Option

Upon the enactment of the impact fee in Arapahoe County, operators may deem the fee disproportionate for their specific project and wish to calculate their own traffic impact study on which the County can assess a more proportional fee. Other municipalities and counties, such as Adams County, have preserved the right for operators to conduct their own independent traffic impact study should they disagree with the fee assessed by the County. The County should allow operators to conduct their own traffic impact study and establish guidelines as to the methodology of the independent study, including how an operator can appeal any such decision by the County.

One method of calculation that COGA asks the County to develop is an Equivalent Single Axle Load (ESAL) – lane mile-based cost factor for load-based impacts and VMT-lane-mile based cost factors for any trip-based impacts. This method of fee calculation is one of the most proportionate ways to calculate an impact fee, as it is specific to the type of vehicles used and the exact miles they will be travelling on county roadways. A study conducted in Thornton by FHU provides a good example of ESAL-lane-mile based option that the County may want to consider.

Summary

COGA again would like to thank Arapahoe County for the opportunity to comment on the proposed traffic impact study and fee. Through a stakeholder processes such as this, COGA is confident that the County and industry can reach a mutually beneficial conclusion that other areas can look at as a model example. We ask that as the County continues to move forward in this process to include stakeholders not just from the oil and gas industry, but from other industries as well. The trucking sector plays a key role in oil and gas transportation and logistics, and we ask that the Colorado Motor Carriers Association also be included in this stakeholder process. I have cc'd them on this comment submission.

If there is any further information that COGA and its members can provide to help facilitate this process or help improve the accuracy of the study, please do not hesitate to contact us and we would be happy to assist. COGA and its members look forward to future collaboration with Arapahoe County.

Sincerely,

Ryan Seastrom
Community Outreach Coordinator
Colorado Oil and Gas Association

cc: Christy Woodward – Senior Director of Regulatory Affairs, COGA
Andrew Casper – Director of Legal and Regulatory Affairs, COGA
Dan Haley – President and CEO, COGA
Greg Fulton – President, Colorado Motor Carriers Association