

AGREN BLANDO COURT REPORTING & VIDEO INC

<p style="text-align: right;">1</p> <p>THE OIL AND GAS CONSERVATION COMMISSION STATE OF COLORADO Request for an order to) limit the number of wellsites) Delta Petroleum according to Rule 503, to no) Corporation more than three per) section for lands consisting) of Sections 6 and 7,) Cause Nos. 1, 369, Township 9 South, Range 92 West,) 399, 429 6th P.M. and Sections 12, 28) and 29, Township 9 South, Range) Docket No. 93 West 6th P.M., and limit the) 1003-GA-05 number of wellsites to a single) location for lands consisting) of Section 1,Township 8.5 South,) Range 93 West, 6th P.M., and) pursuant to Rule 1202.d(5),) limiting ground disturbing) activity during certain periods) of time for each of the) above mentioned sections,) the production of gas) and associated hydrocarbons) from the Williams Fork and Iles) Formations.)</p> <hr/> <p style="text-align: center;">TRANSCRIPT OF PROCEEDINGS VOLUME 2 June 1, 2010</p> <hr/> <p style="text-align: center;">PURSUANT TO NOTICE to all parties in interest, the above-entitled matter came duly on for hearing before the Colorado Oil & Gas Conservation Commission at 1120 Lincoln, Denver, Colorado 80203, commencing at 12:47 p.m., on Tuesday, June 1, 2010.</p>	<p style="text-align: right;">3</p> <p>1 * * * * *</p> <p>2 P R O C E E D I N G S</p> <p>3 (General proceedings transcribed in Volume</p> <p>4 1 Transcript of Proceedings.)</p> <p>5 COMMISSIONER EPEL: Commissioners, I'm</p> <p>6 going to ask a question. Do you all want to break</p> <p>7 for lunch or proceed with the remaining item on the</p> <p>8 consent agenda, which is Cause No. 1, 369 Docket No.</p> <p>9 1003-GA-05.</p> <p>10 VICE CHAIR DOWLING: Would it be a</p> <p>11 courtesy to our guests if we did that, would they be</p> <p>12 free to go home?</p> <p>13 CHAIR EPEL: I think, Mr. Wonstolen, come</p> <p>14 on up.</p> <p>15 MR. WONSTOLEN: I think we would both</p> <p>16 prefer to get this done.</p> <p>17 CHAIR EPEL: Mr. Wonstolen.</p> <p>18 MR. WONSTOLEN: Thank you, Mr. Chair.</p> <p>19 With me today is Brian Macke, who is the</p> <p>20 regulatory manager with Delta Petroleum. And we are</p> <p>21 bringing before you the first of its kind, which is</p> <p>22 an application under your wildlife series of rules.</p> <p>23 1202.d(5) is the particular rule whereby</p> <p>24 an applicant may request an order of the Commission</p> <p>25 limiting the number of drill sites and applying</p>
<p style="text-align: right;">2</p> <p>1 COMMISSIONERS:</p> <p>2 Chair Joshua Epel</p> <p>3 Vice Chair Michael Dowling</p> <p>4 Commissioner Mike King</p> <p>5 Commissioner Tresi B. Houpt</p> <p>6 Commissioner Mark Cutright</p> <p>7 Commissioner Tom Compton</p> <p>8 Commissioner Martha Rudolph</p> <p>9 Commissioner Richard D. Alward</p> <p>10</p> <p>11 COMMISSION STAFF:</p> <p>12 David Neslin, Director of COGCC</p> <p>13 Carol Harmon, Manager of Commissioner Affairs</p> <p>14 Matt Lepore, Assistant Attorney General</p> <p>15 * * * * *</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">4</p> <p>1 certain timing restrictions as are appropriate and</p> <p>2 have -- that serve essentially as a wildlife</p> <p>3 mitigation plan, thereby exempting the applicant firm</p> <p>4 further ongoing consultation with the Division of</p> <p>5 Wildlife with respect to Form 2As.</p> <p>6 And Mr. Macke will take you through a very</p> <p>7 brief presentation. I think if you were to turn to</p> <p>8 tab 1 and fold out the map at the end of tab 1, it</p> <p>9 might help in going through the presentation.</p> <p>10 MR. MACKE: Thank you very much. My name</p> <p>11 is Brian Macke. I'm a compliance manager with Delta</p> <p>12 Petroleum Corporation located at 370 Seventeenth</p> <p>13 Street, Suite 4300, Denver 80202.</p> <p>14 Thank you very much for the time today. I</p> <p>15 really appreciate the opportunity to showcase this</p> <p>16 time type application. It really is a wildlife</p> <p>17 mitigation plan extension for the Vega fields that</p> <p>18 Delta is operating in Mesa County. The Vega field</p> <p>19 area is depicted in the map that Mr. Wonstolen just</p> <p>20 mentioned. It's about 11 miles east of the Town of</p> <p>21 Coburn in eastern Mesa County, Colorado.</p> <p>22 Since you've been able to read the</p> <p>23 application and look at all the exhibits ahead of</p> <p>24 time, I am going to be very brief as I go through the</p> <p>25 pertinent parts of the application.</p>

5	<p>1 It's a commitment by Delta Petroleum</p> <p>2 Corporation to have more than three well sites in</p> <p>3 five regular sections and just one well site in a</p> <p>4 smaller truncated section in the application area.</p> <p>5 And these sections, as you can see on the</p> <p>6 map that Mr. Wonstolen mentioned, are at least</p> <p>7 partially mapped by the Colorado Division of Wildlife</p> <p>8 as elk winter concentration areas.</p> <p>9 In addition to a commitment to not having</p> <p>10 more than the noted number of well sites, Delta is</p> <p>11 committing to not conducting ground disturbing</p> <p>12 activities on any more than one of the well sites per</p> <p>13 section in the applications during the period between</p> <p>14 January 1st and March 31st in any given year.</p> <p>15 And I will mention Delta is a current</p> <p>16 operator and either owns or has a contractual working</p> <p>17 interest of 100 percent of the lands in the</p> <p>18 application area. So there are no other mineral</p> <p>19 interest owners that are affected by this</p> <p>20 application.</p> <p>21 And that the Oil & Gas Conservation</p> <p>22 Commission has previously authorized ten acre bottom</p> <p>23 hole density for the entire area in the leasehold</p> <p>24 area depicted in yellow on the map.</p> <p>25 And along with those limitations also came</p>	7	<p>1 in the area of oil and gas wells, that type of thing</p> <p>2 that makes it so that it is technically and</p> <p>3 economically feasible to do this.</p> <p>4 I would mention that this wouldn't be</p> <p>5 applicable to all oil and gas producing areas in</p> <p>6 Colorado that don't have these unique combinations of</p> <p>7 characteristics.</p> <p>8 And the application requests that Delta be</p> <p>9 excused from the consultation requirements with the</p> <p>10 Division of Wildlife with respect to the Form 2A</p> <p>11 under the Oil & Gas Conservation Commission Rule</p> <p>12 1202.d(5). 1202 you'll recall requires a</p> <p>13 consultation if you're in those sensitive wildlife</p> <p>14 areas, unless one or more of a certain number of</p> <p>15 things takes place.</p> <p>16 And one of those is an applicant seeking</p> <p>17 and obtaining an order from the Commission limiting</p> <p>18 the surface well sites, adopting the timing</p> <p>19 limitations, that type of thing. So that sets a rule</p> <p>20 under which we're making this application.</p> <p>21 And even though the formal consultation</p> <p>22 with the Colorado Division of Wildlife wouldn't be</p> <p>23 required, Delta is engaged in very comprehensive</p> <p>24 biological and cultural studies in the area using a</p> <p>25 contractor. You will notice in one of the exhibits</p>
6	<p>1 the limitations to no more than one well site for 40</p> <p>2 acre area in those lands, essentially 16 well sites</p> <p>3 per section.</p> <p>4 So this application results in over an 80</p> <p>5 percent reduction in the number of authorized well</p> <p>6 sites along with associated access roads, production</p> <p>7 facilities, and pipelines and those type of things.</p> <p>8 So it is a very dramatic decrease and will</p> <p>9 be authorized for surface disturbance. And Delta has</p> <p>10 chosen to proactively adopt the Wildlife Habitat</p> <p>11 Mitigation Plan by submitting this application and</p> <p>12 includes dramatically limiting those surface impacts.</p> <p>13 And the Delta drilling staff, who I might</p> <p>14 mention the fellow who provided testimony in the</p> <p>15 exhibits, Michael Cleary, is a very renowned</p> <p>16 directional drilling engineer, who is actually on</p> <p>17 loan to BP to address their issue down south right</p> <p>18 now. So that kind of gives you an idea of some of</p> <p>19 his qualifications.</p> <p>20 And he is determined that this drilling</p> <p>21 directionally from a limited number of pads in these</p> <p>22 areas will economically and technically feasibly</p> <p>23 recover the resource in these areas.</p> <p>24 And it really is a combination of the</p> <p>25 depth and the topography and the type of production</p>	8	<p>1 Wildlife Specialties that employs certified wildlife</p> <p>2 biologists who engage in those studies and we commit</p> <p>3 to using the results of those studies in locating</p> <p>4 well pads and roads and pipelines and that type of</p> <p>5 things.</p> <p>6 In addition to that, you'll recall that</p> <p>7 Rule 1203 required the use of 16 general operating</p> <p>8 requirements in sensitive wildlife habitat areas</p> <p>9 independent of the Colorado Division of Wildlife</p> <p>10 consultation process which Delta will certainly</p> <p>11 comply with.</p> <p>12 So in summary, a combination of stringent</p> <p>13 limitations on the well site, the operational timing</p> <p>14 and use of the expert wildlife biologist to identify</p> <p>15 ways to mitigate impact to wildlife and protect the</p> <p>16 environment and wildlife values and still allow gas</p> <p>17 development to occur.</p> <p>18 So Delta is here to state that the</p> <p>19 granting of this application will minimize surface</p> <p>20 disturbance, prevent waste of oil and gas resource,</p> <p>21 protect relative rights and assure the greatest</p> <p>22 development and recovery of gas associated</p> <p>23 hydrocarbons from the reservoirs.</p> <p>24 So Delta respectfully requests that the</p> <p>25 Oil & Gas Conservation Commission approve the</p>

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<p align="right">9</p> <p>1 application.</p> <p>2 That will conclude my brief rundown of the</p> <p>3 application.</p> <p>4 CHAIR EPEL: Questions for Mr. Macke?</p> <p>5 MR. CUTRIGHT: I have a question.</p> <p>6 CHAIR EPEL: Commissioner Cutright.</p> <p>7 MR. CUTRIGHT: Did the DOW put their stamp</p> <p>8 of approval on this? I mean, are they accepting of</p> <p>9 this? I don't see any comments from them at all on</p> <p>10 this.</p> <p>11 MR. WONSTOLEN: This is a rule</p> <p>12 application. DOW has no standing on this particular</p> <p>13 application. Now, Mr. Macke did contact DOW as a</p> <p>14 matter of courtesy. You know, if they want to come</p> <p>15 and oppose it, I guess they could, but this is a rule</p> <p>16 application.</p> <p>17 CHAIR EPEL: Commissioner Alward.</p> <p>18 COMMISSIONER ALWARD: Thank you,</p> <p>19 Mr. Chair.</p> <p>20 I do want to remind the Commission this is</p> <p>21 the first time something like this has come before</p> <p>22 us. And so this is -- you know, nobody has come</p> <p>23 before us with this rule. And so we should be</p> <p>24 thoughtful as we consider it.</p> <p>25 I have a question in that, you know, we've</p>	<p align="right">11</p> <p>1 bind the ability of other leasehold owners to drill</p> <p>2 their wells. And either where you have to come in</p> <p>3 jointly with an application, and which is a</p> <p>4 possibility, but we didn't think it was appropriate</p> <p>5 to limiting the number of drill sites that binds</p> <p>6 parties that are not before you.</p> <p>7 COMMISSIONER ALWARD: Thanks. That's</p> <p>8 exactly why I wanted to have a presentation, to have</p> <p>9 the opportunity to get these issues cleared up.</p> <p>10 MR. WONSTOLEN: Certainly.</p> <p>11 COMMISSIONER ALWARD: One of the things</p> <p>12 we're doing with this, also, to some extent this is</p> <p>13 like a categorical exclusion which we're just saying</p> <p>14 there aren't any. We're deciding there aren't going</p> <p>15 to be any impacts by following this rule and, thus,</p> <p>16 again, I think that's why we should be very</p> <p>17 thoughtful as we decide what we want to do with this.</p> <p>18 Because of the -- one of the things we're doing also</p> <p>19 is we're putting in a wildlife mitigation plan</p> <p>20 essentially. And I don't know how many of us</p> <p>21 consider ourselves experts in developing something</p> <p>22 like that.</p> <p>23 And we're asking our Director to approve</p> <p>24 what are the dates in which only one pad would be</p> <p>25 operational. We're asking our Director whether or</p>
<p align="right">10</p> <p>1 got five sections -- five and a partial section that</p> <p>2 we are considering in particular on this, but not</p> <p>3 sections 1 and 2, which are Delta leasehold and are</p> <p>4 also elk winter concentration and so on.</p> <p>5 So I would like some understanding as to</p> <p>6 why those parcels are being excluded from this</p> <p>7 application.</p> <p>8 MR. MACKE: Thank you for the question,</p> <p>9 Commissioner.</p> <p>10 The answer to that is we wanted to limit</p> <p>11 the application to only those sections where Delta</p> <p>12 had 100 percent of the leasehold. In those sections</p> <p>13 that you just mentioned, Delta does not have that.</p> <p>14 There are other leasehold owners within those</p> <p>15 sections. And to avoid any problems going forward</p> <p>16 with other lease owners, Delta just limited the</p> <p>17 application to lands where we had 100 percent of the</p> <p>18 control over the mineral interests.</p> <p>19 In those sections Delta would be complying</p> <p>20 with the rules otherwise, consultation with the</p> <p>21 Division of Wildlife, that type of thing, inside the</p> <p>22 sensitive wildlife habitat area.</p> <p>23 CHAIR EPEL: Commissioner Alward.</p> <p>24 MR. WONSTOLEN: If I can just supplement</p> <p>25 that. The effect of that is Delta is not trying to</p>	<p align="right">12</p> <p>1 not he considers himself qualified to make those</p> <p>2 decisions.</p> <p>3 MR. WONSTOLEN: Commissioner Alward, I'll</p> <p>4 point out those dates are prescribed by rules not in</p> <p>5 the discretion of the Director.</p> <p>6 COMMISSIONER ALWARD: Or other</p> <p>7 biologically appropriate alternative dates.</p> <p>8 MR. WONSTOLEN: That would be if you had</p> <p>9 another species of concern in a different period.</p> <p>10 COMMISSIONER ALWARD: But, I mean, that's</p> <p>11 overall. There are reasons -- there's potential to</p> <p>12 want to move that around if that was the general sort</p> <p>13 of set of dates overall, but other dates may be</p> <p>14 considered more appropriate if we had the expertise</p> <p>15 to be able to evaluate that.</p> <p>16 MR. MACKE: I guess I would reiterate</p> <p>17 Mr. Wonstolen's statements about the limitation dates</p> <p>18 were established by rule for that particular species.</p> <p>19 And there would be other biologically appropriate</p> <p>20 alternatives for one of those other species listed in</p> <p>21 the rule.</p> <p>22 VICE CHAIR DOWLING: I think because this,</p> <p>23 in fact, is an elk winter concentration area, there</p> <p>24 is a 90-day period set by rule. It's not one of the</p> <p>25 periods -- it's not one of the species where there is</p>

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<p>1 a discretionary 90-day period.</p> <p>2 MR. MACKE: Yes, sir.</p> <p>3 COMMISSIONER ALWARD: Since there's an elk</p> <p>4 production in the caveat, that's where I was mixing</p> <p>5 the two.</p> <p>6 But, you know, one thing that has got me a</p> <p>7 little bit worried, it's a very minor error, but it</p> <p>8 concerns me, then, about some of the other thoughts</p> <p>9 going into this because it's highlighted. And you</p> <p>10 highlighted, also, this would be an 80 percent</p> <p>11 reduction in the number of authorized well sites.</p> <p>12 And that would be true if these were 640</p> <p>13 acre sections, but they're smaller than that. And so</p> <p>14 it's a very minor error, but it makes me -- my</p> <p>15 attention is drawn to it and it makes me concerned</p> <p>16 about what other things might have been overlooked.</p> <p>17 MR. MACKE: That was a rounding to 80</p> <p>18 percent. I believe if you took the authorized well</p> <p>19 sites total for all those sections, it would be</p> <p>20 actually somewhat even greater.</p> <p>21 COMMISSIONER ALWARD: It would be 76</p> <p>22 percent.</p> <p>23 MR. MACKE: 76 percent.</p> <p>24 COMMISSIONER ALWARD: Yeah. So, again,</p> <p>25 it's a very minor error, but it concerns me that</p>	<p>1 Cause No. 1, 369, 399, and 429 Docket No. 1003-GA-05.</p> <p>2 CHAIR EPEL: Do I have a second?</p> <p>3 VICE CHAIR DOWLING: I second.</p> <p>4 I do have one more question for Mr. Macke,</p> <p>5 if that's all right.</p> <p>6 CHAIR EPEL: Certainly. This is</p> <p>7 discussion. Please.</p> <p>8 VICE CHAIR DOWLING: Mr. Macke, I'm just</p> <p>9 curious -- first of all, I'm glad this safe harbor, I</p> <p>10 term it safe harbor, is being availed of the first</p> <p>11 time and I hope it proves to be successful use of it.</p> <p>12 Just I'm curious, has the Director yet</p> <p>13 given you the guidance as to which of the three sites</p> <p>14 where will be the one where ground disturbing</p> <p>15 activities will be allowed or is that a consultation</p> <p>16 you have not yet had?</p> <p>17 MR. MACKE: That's a consultation we have</p> <p>18 not yet had. In many of these cases we haven't even</p> <p>19 submitted APDs yet.</p> <p>20 VICE CHAIR DOWLING: Okay. That's in the</p> <p>21 future still. Great. Thanks very much.</p> <p>22 MR. MACKE: I understand this rule was a</p> <p>23 brain child of yours?</p> <p>24 VICE CHAIR DOWLING: I don't know exactly.</p> <p>25 MR. MACKE: That's my recollection.</p>
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<p>1 something else could be overlooked. Because there's</p> <p>2 not 1920 acres in those three sections up there.</p> <p>3 There's only 1530 acres. So it's just a minor issue</p> <p>4 that I wish hadn't been highlighted because, again,</p> <p>5 it makes me concerned that there's something else</p> <p>6 that we could be missing when this is an important</p> <p>7 decision we need to make.</p> <p>8 MR. MACKE: If the Commission would -- it</p> <p>9 would be our pleasure, we can amend the testimony and</p> <p>10 make sure that is corrected after we review that and</p> <p>11 make sure about the numbers. I believe that the</p> <p>12 order of magnitude of reduction we're talking about</p> <p>13 is still very much in the ballpark.</p> <p>14 CHAIRMAN EPEL: Commissioner Alward.</p> <p>15 COMMISSIONER ALWARD: Yeah, it's not that</p> <p>16 substantial as long as that's all that we're really</p> <p>17 dealing with, I think reducing it down to nine well</p> <p>18 pads instead of the 38 or so that we're potentially</p> <p>19 authorized for that area is a great reduction, I'm</p> <p>20 not denying that. But, again, just the attention to</p> <p>21 detail is making me leery.</p> <p>22 CHAIR EPEL: Commissioner Compton.</p> <p>23 COMMISSIONER COMPTON: Thank you,</p> <p>24 Mr. Chairman.</p> <p>25 I would like to move approval of</p>	<p>1 VICE CHAIR DOWLING: Okay. Thank you.</p> <p>2 CHAIR EPEL: Commissioner King.</p> <p>3 COMMISSIONER KING: Mr. Chairman, thank</p> <p>4 you.</p> <p>5 I, too, appreciate you taking the</p> <p>6 initiative and I like the safe harbor provision. My</p> <p>7 comfort level might be increased a little bit if the</p> <p>8 Division had been given a cc on what you were doing.</p> <p>9 It's certainly not a hearing that they would be</p> <p>10 entitled to but their ability to look and make sure</p> <p>11 that the mapping that you were using is consistent</p> <p>12 with what they were using would have provided me a</p> <p>13 little bit more comfort, and I would like to see that</p> <p>14 in the future.</p> <p>15 MR. MACKE: You bet. Right at the time we</p> <p>16 filed this application, I personally called Kim Kaal</p> <p>17 up in Grand Junction and walked her through the</p> <p>18 application. There was a significant amount of</p> <p>19 communication that has been placed and we're very</p> <p>20 happy to do that.</p> <p>21 COMMISSIONER KING: Great. That makes me</p> <p>22 feel better. Thank you.</p> <p>23 CHAIR EPEL: Additional discussion?</p> <p>24 (No response.)</p> <p>25 CHAIR EPEL: We have a motion and a</p>

<p>17</p> <p>1 second. All in favor say aye, please. 2 (Aye responses.) 3 CHAIR EPEL: Opposed. 4 (No response.) 5 CHAIRMAN EPEL: It passes unanimously. 6 Thank you very much. 7 (Further proceedings transcribed under 8 Volume 1.) 9 * * * * *</p> <p>10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	
<p>18</p> <p>1 C E R T I F I C A T I O N 2 I, KELLY A. MACKERETH, CRR, RPR, CSR, 3 appointed to take the above hearing certify that that 4 the hearing was reported by me on 6/1/10; that the 5 proceedings were reduced to typewritten form by 6 computer-aided transcription; that the foregoing is 7 an accurate transcript of the proceedings. 8 I further certify I am not related to any 9 party herein or their counsel and have no interest in 10 the result of this litigation. 11 IN WITNESS WHEREOF, I have hereunto set my 12 hand this 8th day of June, 2010. My Commission 13 expires 4/21/11. 14 15 16 17 18 19 20 21 22 23 24 25</p> <hr/> <p>KELLY A. MACKERETH Certified Realtime Reporter Registered Professional Reporter Certified Shorthand Reporter</p>	