

BEFORE THE ENERGY AND CARBON MANAGEMENT COMMISSION
OF THE STATE OF COLORADO

IN THE MATTER OF THE APPLICATION OF CAERUS) CAUSE NO. 1
PICEANCE LLC FOR A VARIANCE FROM RULE)
1004.A AND 1004.D RECLAMATION REQUIREMENTS) DOCKET NO. 230500171
FOR THE LEWIN-THORNBURG UNIT-FED)
63N91W/17NESE LOCATION, DAKOTA FORMATION,) TYPE: VARIANCE
THORNBURG FIELD, MOFFAT COUNTY, COLORADO)
) ORDER NO. 1-354

REPORT OF THE COMMISSION

The Commission heard this matter on May 1, 2024, at the Colorado Energy and Carbon Management Commission (the “Commission” or “ECMC”), 1120 Lincoln St., Suite 801, Denver, Colorado, upon application for an order approving a Rule 502 variance from Rules 1004.a and 1004.d for the Lewin-Thornburg Unit-Fed 63N91W/17NESE Oil and Gas Location (Location ID 391350) (the “Lewin-Thornburg Location”) in Moffat County at the following property:

Township 3 North, Range 91 West, 6th P.M.
Section 17: NE $\frac{1}{4}$ SE $\frac{1}{4}$

FINDINGS

The Commission finds as follows:

1. Caerus Piceance LLC (Operator No. 10456) (“Caerus”), as applicant herein, is an interested party in the subject matter of the above-referenced proceeding.
2. Due notice of the time, place, and purpose of the proceeding has been given in all respects as required bylaw.
3. The Commission has jurisdiction over the subject matter embraced in said notice, and of the parties interested therein, and jurisdiction to promulgate the hereinafter prescribed order pursuant to the Colorado Oil and Gas Conservation Act.
4. Pursuant to C.R.S. § 34-60-106(12), the Commission promulgated its 1000-Series Rules to govern reclamation of the land and soil affected by oil and gas operations. See Rule 1001.a. Generally, the Commission’s reclamation regulations require the surface of land affected by oil and gas operations to “be restored as nearly as practicable to its condition at the commencement of drilling operations.” *Id.*
5. Rule 1001.c provides that the Commission “shall not require compliance with” the reclamation requirements of Rule 1004 (except Rules 1004.c.(4) and 1004.c.(5)) “if the operator can demonstrate . . . both that compliance with such rules is not necessary to protect the public health, safety and welfare, including prevention of significant adverse environmental impacts, and that the operator has entered into an agreement with the surface owner regarding topsoil protection and reclamation of the land.” Prior to final reclamation approval, the operator “shall either comply with the rules or obtain a variance.” Rule 1001.c.

6. Rule 1004 addresses final reclamation of well sites and associated production facilities. All pits must be backfilled and reclaimed. Rule 1004.a. Final reclamation is not complete until “all disturbed areas have either built upon, compacted, covered, paved, or otherwise stabilized.” Rule 1004.d.

7. Rule 502.a provides that “[r]equests for variances to any of the Commission’s Rules or orders will be filed with the Commission.”

8. Rule 502.c provides that an applicant requesting a variance from the Commission pursuant to Rule 502.a must show:

- A. It has made a good faith effort to comply, or is unable to comply, with the specific requirements contained in the Commission’s Rule or order from which it seeks a variance, including, without limitation, securing a waiver or an exception, if any;
- B. The requested variance will not violate the basic intent of the Act;
- C. The requested variance is necessary to avoid an undue hardship;
- D. Granting the variance will result in no net adverse impact to public health, safety, welfare, the environment, or wildlife resources; and
- E. The requested variance contains reasonable conditions of approval or other mitigation measures to avoid, minimize, or mitigate adverse impacts to public health, safety, welfare, the environment, and wildlife resources.

9. On May 9, 2023, Caerus, through counsel, filed a verified application (“Application”) pursuant to Rule 503.g.(9) for a variance from the reclamation requirements of Rules 1004.a and 1004.d because the surface owner desired and agreed to leave a portion of the Lewin-Thornburg Location and Access Road stabilized and compacted for livestock and outfitting operations.

10. On June 6, 2023, the ECMC Permitting Group approved the Application, stating that the Permitting Group “has no concerns with this application.”

11. Caerus noticed its Application as required by the Commission’s rules.

12. On February 15, 2024, Director Murphy submitted her recommendation on the Application. Director Murphy recommended approval of the variance; however, the Director determined that the variance was not “ministerial in nature, in that it results in a potentially permanent impact that will have to be managed by the landowner and local relevant government.” Accordingly, a hearing before the ECMC was held.

13. The Commission has not received any petitions pursuant to Rule 507. Therefore, the Application is uncontested.

14. The Application requests a variance from the reclamation requirements of Rules 1004.a and 1004.d for the Lewin-Thornburg Location. The Location and access road were constructed on lands owned by Winslett Ranch, Inc. (the “Surface Owner”). Prior to June 2, 2016, Encana Oil & Gas (USA) Inc., the former operator of the associated Lewin-Thornburg Unit-Fed #1 well, conducted an on-site review of the planned reclamation for the Location with the Surface

Owner in accordance with Rules 306.a. and 306.f, in effect at the time. The Surface Owner requested that a portion of the well site area be left level and stabilized and that the access road be left in a stabilized, compacted condition for access to the property for livestock and outfitting operations. All other areas of the Location were, however, to be revegetated.

15. As provided in Exhibit B to the Application, on September 22, 2016, the Surface Owner executed the Final Reclamation Agreement, which confirmed its request that a portion of the Location and the access road be left unreclaimed, that the reclamation work was performed to its satisfaction, and waived further final reclamation of the Location and access road pursuant to Rules 1004.a. and 1004.d.

16. Based on the Application, Surface Owner Agreement, and other written filings, the Commission concludes the Application satisfies the requirements of Rule 502.c because:

- A. Caerus “has made a good faith effort to comply” with Rules 1004.a and 1004.e. Rule 502.c.(1). Approximately .85 acres of the disturbed area have been reclaimed, with the remaining .95 acres of the Location and Access Road left level and compacted for the Surface Owner’s livestock and outfitting operations. The remainder of the Location has been revegetated with desirable plants to promote stabilization and prevent sediment-laden runoff, erosion, and topsoil loss.
- B. Caerus’s requested variance will not violate the basic intent of the Oil and Gas Conservation Act. See Rule 502.c.(2). Deference to the surface owner’s wishes regarding continued use of their property is consistent with multiple provisions of the Act recognizing the significant role the surface owner should play regarding the reclamation of and operations on his or her land. See, e.g., C.R.S. § 34-60-106(3.5) (directing that land restoration occur “in accordance with the owner of the surface of the lands”); C.R.S. § 34-60-127(1)(a) (requiring that oil and gas operations “accommodate[] the surface owner” in conducting oil and gas operations).
- C. The variance is necessary to avoid undue hardship, namely, the loss of a productive use of the Surface Owner’s Land and a continuous revenue stream. See Rule 502.c.(3). The Lewin-Thornburg Location and access road continue to support the Surface Owner’s livestock and outfitting operations.
- D. The variance will not result in a “net adverse impact to public health, safety, welfare, the environment, or wildlife resources.” See Rule 502.c.(4). Caerus conducted an Operator’s Analysis of the impacts associated with the requested variance and determined that approval of the requested variance will not result in any adverse impacts to public health, safety and welfare, the environment or wildlife resources. All equipment, trash, and debris has been removed, the existing disturbance stabilized, and stormwater protections have been implemented in the form of desirable vegetation and equivalent permanent stabilization methods.
- E. Pursuant to Rule 502.c.(5), the variance contains reasonable conditions of approval and mitigation measures to avoid, minimize, or mitigate adverse impacts to public health, safety, welfare, the environment, and wildlife

resources. The Lewin-Thornburg Location has been revegetated to stabilize the area and prevent stormwater runoff, erosion, and topsoil loss. The remaining unreclaimed portion of the Location and access road have not been recontoured or alleviated of compaction but have been left stabilized and compacted for the Surface Owner's livestock and outfitting operations. Further, Caerus has continued to monitor and control stormwater and noxious weeds and, as provided in the Final Reclamation Agreement, has agreed to continue such efforts until bond release. Accordingly, no conditions of approval or additional mitigation measures beyond those provided in the Final Reclamation Agreement are necessary to avoid minimize or mitigate adverse impacts to public health safety and welfare the environment, and wildlife resources.

17. Caerus agrees to be bound by oral order of the Commission.

18. Based on the facts stated in the verified Application, the Surface Owner Agreement, and other materials submitted by Caerus, and no petitions having been received, the Commission finds that Caerus has satisfied Rule 502.c and that the requested variance to Rules 1004.a and 1004.d is warranted for the Lewin-Thornburg Location.

ORDER

NOW, THEREFORE, IT IS ORDERED, that:

1. The Application for a Rule 502 variance from the reclamation requirements of Rules 1004.a and 1004.d for the Lewin-Thornburg Location that the Surface Owner wants to retain in Moffat County, Colorado is GRANTED.

2. The provisions contained in this Order shall become effective immediately.

3. Within 30 days of this Order, Applicant will submit a Form 4 documenting the variance relief to the Location ID: 391350. The Form 4 will include the Order number, all Rules from which relief was granted, and a summary of the relief granted.

4. The Commission expressly reserves its right, after notice and hearing, to alter, amend or repeal any and/or all of the above orders.

5. Under the State Administrative Procedure Act, the Commission considers this Order to be final agency action for purposes of judicial review within 35 days after the date this Order is mailed by the Commission.

6. An application for reconsideration by the Commission of this Order is not required prior to the filing for judicial review.

ENTERED this 1st day of May, 2024, as of May 1, 2024.

ENERGY AND CARBON MANAGEMENT COMMISSION
OF THE STATE OF COLORADO

By  _____
Elias J. Thomas, Commission Secretary