



The CAMRO Board of Directors

- Neil Ray, President**
neilray@centurylink.net
303.880.0617
- Debra Anderson, Secretary**
debraa@outlook.com
719.661.7614
- Don Phend, Treasurer**
phendcpa@aol.com
303.298.7908
- Ben Clay**
bclay@carpiclay.com
619.295.6239
- Kathy Allen, Secretary**
escrowkathy@hotmail.com
303.503.2095
- Keith Crichton, At Large**
kmcrichton@comcast.net
303.779.8884
- Cristy Koeneke, At Large**
cristykoeneke@gmail.com
303.423.4392
- Jake Schaeffer**
jake.schaeffer@gmail.com
732.832.1341
- Travis Holland**
Travis.Holland@anadarko.co

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of Public Health and the Environment (CDPHE) to address the concerns voiced by the Earth Guardians. Because the Court determined the Act is susceptible to differing interpretations the Court carefully reviewed the legislative history and purpose of the disputed provisions. This deep dive into the Act, and its iterations, will be instructive if more challenges come up regarding the scope of the Commission’s authority. The Court also affirmed the Commission’s broad discretion in the interpretation of its enabling Act, something to watch with interest as the administration changes, and new interpretations possibly arise. In any event, the Decision was unanimous and well written, consistent with the arguments advanced by the Commission as well as CAMRO. Perhaps most importantly the Court did not lose sight of the fact the Commission remains charged with fostering the production of oil and gas in our State. Unless this portion of the legislative mandate changes, the Commission remains tasked with considering multiple legislative priorities, including its original purpose to encourage the responsible development of CAMRO members’ minerals.

Tax The Sun and The Wind

During the campaign to defeat Proposition 112, the citizens of Colorado were well educated in how much ad valorem, severance tax, and State Land Board revenue is collected on the sale of oil and gas. The proposed elimination of fossil fuels eliminates that revenue, and will have to be backfilled somehow. For 155 years England taxed the sun. It was called the Window Tax. It was first established in 1696, and repealed in 1851. It was a progressive tax based on the theory that the more windows a house had, the more wealthy the owner. Its actual effect was to cause homeowners to board up their windows, and homebuilders to build with as few windows as possible. It was eventually repealed because it was ruining the health of citizens, especially the poor. **The adage ‘free as air’ has become obsolete by Act of Parliament,”** thundered Charles Dickens in 1850. **“Neither air nor light have been free since the imposition of the window tax. We are obliged to pay for what nature lavishly supplies to all, at so much per window per year; and the poor who cannot afford the expense are stunted in two of the most urgent necessities of life.”** Look forward to it.



Protecting Our Property Rights - Protecting Our Future

The Long Road to a Supreme Court Decision

On January 14, 2019, the Colorado Supreme Court issued its ruling in Colorado Oil and Gas Conservation Commission (COGCC) v. Martinez, 17SC297, nearly two years after the Court decided to hear the case. The Decision was prompted by a proposed 2014 rulemaking brought before the Commission by several youth activists, self-named the Earth Guardians, who in the Court’s words “devote[] substantial time and effort toward pursuing their goal of protecting the health of Colorado citizens and Colorado’s environment.” ¶1. At that time the activists proposed a rule that would have precluded the issuance of any drilling permits unless the operator could show that drilling could occur in a manner “that does not cumulatively, with other actions, impair Colorado’s” environment and public health. ¶2. CAMRO (then NARO) weighed in on the requested Rulemaking through a 510 statement objecting to the proposed rulemaking as contradictory to the Commission’s legislative purpose to foster oil and gas development, and beyond the Commission’s statutory authority. The Commission declined the rulemaking request and the District Court affirmed the Commission’s decision. In a somewhat surprising, and split, decision the Court of Appeals reversed, interpreting language contained in the Colorado Oil and Gas Conservation Act, to allow development “in a manner consistent with” protection of the environment and health to mean protection of the environment and health was a condition precedent to development. In other words, if the environment or health would be impacted, development should not proceed. The Commission appealed, and was joined by American Petroleum Institute (API) and the Colorado Petroleum Association (CPA) as Intervenors. CAMRO requested, and was granted amicus status. The Supreme Court’s revered the Court of Appeals, focusing on three critical points; first, the extreme deference that must be afforded the Commission when interpreting its own statute; second, the Court concluded that based on the Act’s language the Commission could not properly adopt the proposed rule because it would require the Commission to place one policy concern above all others; and third, the fact the Commission was working with the Colorado Department

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Save the Date

CAMRO
Annual Conference
June 7 & 8
Pinehurst Country Club
6255 W. Quincy Ave.
Denver

In Their Own Words.

Throughout the upcoming legislative session quotes from legislators and administration officials that weigh in on oil and gas issues will be repeated here.

Governor Jared Polis



When we talk about protecting Colorado's way of life we need to talk about climate change.

Climate change is a scientific reality, it's real. There is no pretending otherwise for farmers and ranchers who are facing historic water shortages there's no pretending

otherwise. For the 46,000 women and men who work in Colorado's ski industry and see their jobs threatened by decreased snowpack. And there will be no pretending otherwise in this administration. We're going to want to take advantage of the huge opportunities associated with being a leader in the growing green energy economy.

I launched my campaign for Governor in Pueblo at an all-solar coffee roasting small business just 10 miles from the Vestas Wind Turbine factory, which employs 800 Coloradans today.

I did so to demonstrate that our commitment to reaching 100% renewable energy by 2040 is not just about climate change it is about saving money for consumers with cheaper energy, and it is about making sure the good paying green jobs of the future are created right here in Colorado.

Today the work begins setting Colorado on course to reach that goal.

That means modernizing both our grid infrastructure and our regulatory processes to ensure all Coloradans are reaping the full suite of benefits associated with swift adoption of renewable energy.

It means working to electrify our cars and buses and trucks.

And it means taking advantage of modern technology to use energy more efficiently cleaning our air and saving consumers money in the process.

As Governor, my goal is to lead the statewide transition to a clean, sustainable and growing economy. It is imperative for our climate, our security, our health and our economic growth for all coloradans.

We will lead with policies that support, enable, and accelerate market investment. We will work with stakeholders across Colorado on outcomes based approaches that promote innovation, and that deliver emissions reductions from all sources, reductions in consumer costs, and sustainable economic growth from communities across Colorado.

We will build upon significant work and commitment by communities, businesses, and people throughout the state. Today 62,800 people are employed in advanced energy in Colorado. Xcel Energy has committed to achieving 80% carbon reduction by 2030 and 100% carbon free electricity by 2050. Communities like Pueblo, Summit County, Fort Collins, Denver and others across the state have embraced strong climate goals. We are already leading the way forward right here in Colorado and now we will build on that progress. Make no mistake With price declines and technology advances, the move toward renewable energy is already taking place and will only accelerate. But as we embrace the renewable energy future, we must also do right by all the men and women in today's energy workforce. Some of the hardest working people in Colorado today work in the coal and oil and gas industries and we will not leave them behind.

We will embrace the skills and experience these Coloradans bring to the table. Their help will be needed and rewarded at every single step of this transition. and we will support the communities these jobs have sustained, to ensure they can continue to thrive in the renewable energy economy.'Creative financing mechanisms that exist today can ensure that consumers pay lower rates as we move to renewables, and help provide for a transition that is just and fair both for workers and for communities directly impacted.

Colorado has always been, and must always be, a place where we respect the dignity of hard work. Providing for ourselves and our families is at the core of the Colorado Way of Live we all love and a strong economy cannot be built on any one sector, or any on region of the state, on its own. Our mission is to help businesses of all kinds start, grow, thrive, and create good paying jobs across Colorado, from the Western Slope and the Eastern Plains, to the Front Range, Southern Colorado, and the San Luis Valley.

We will value every job. We will respect every worker and every shareholder. We will protect the rights of workers to organize and collectively bargain for the pay and benefits they deserve, and the rights of shareholder to lead their companies. And just as we stand up for workers and good jobs, so too must we stand up for our communities and their right to have a voice when it comes to industrial activities within their borders. It's time for us to take meaningful action to address the conflicts between oil and gas drilling operations and the neighborhoods they impact, and to

make sure that all of our communities have clean air and water. This a vital quality of live issue for Colorado families.

Attorney General Phil Weiser



To ensure safe oil and gas development, I am committed to supporting honest, science-based evaluation of appropriate protective measures and working with local governments as they develop appropriate protective measures.

At the state level, the Colorado Oil and Gas Conservation Commission ("COGCC") is responsible—with proper legal guidance—for developing protective measures to address any adverse health impacts on our citizens. Over time, the science of how oil and gas wells contribute to air pollution has continued to develop. As the state agencies charged with oversight continue to monitor this issue, they develop appropriate rules for governing air quality and pollution mitigation measures.

At the local level, when communities consider pushing for protective measures like setback requirements, it is important to allow them flexibility to explore their options. Communities can, for example, enter into memoranda of understanding that allow replacements for existing facilities in order to reduce pollution, noise, and negative environmental impacts.

In line with the Democratic candidates for Governor, I am not in favor of a proposed statewide categorical requirement that prescribes a 2,500-foot setback for all new facilities. One important concern I have with this proposal is that it would have the unintended consequence of preventing communities from taking measures to keep them safer. Notably, under this proposal, companies would have the incentive to keep older and dirtier facilities running for longer and communities could not authorize the retirement of such facilities in return for the establishment of new and safer ones. Moreover, it is not sufficient to focus only on appropriate setback requirements; it is also important to consider other protections, such as rules governing well casing, cementing, and blowout prevention.

The Martinez case would have never reached the Court of Appeals if the Attorney General had given the regulators proper legal advice in the first place.

Indeed, the Court of Appeals concluded that the Attorney General gave the Commission bad advice in the first place. In particular, it ruled that the Commission had the authority to consider the proposed rule because Colorado law "mandates that the development of oil and gas in Colorado be regulated subject to the protection of public health, safety, and welfare, including protection of the environment and wildlife resources." As Governor Hickenlooper explained, the Court of Appeals' ruling is aligned with the current practice of the Commission. Therefore, the Governor requested that the court's ruling be allowed to stand. The Attorney General refused to follow that request.

Speaker of the House K. C. Becker



KC Becker says if the courts won't change how drilling permits are issued, lawmakers will. She says they will rewrite state law to make health and safety bigger considerations. "I think what we want to do is have regulators look at permitting in terms air quality, water quality, quality of life, noise, smells, pollution. I don't think including health and safety as a primary concern is going to put oil

and gas out of commission in Colorado."

"I think local control is absolutely part of the solution," Becker said. "I don't think a setback is necessarily the right way to go. It's a one-size-fits-all solution that doesn't address where this state needs to go."

Senator Mike Foote



It is well beyond time for us to protect Coloradans and our clean air and water, I am confident that my colleagues and I will come forward with legislation to do exactly that."The Martinez language is a good start," Foote said, referring to the rule initially proposed by Martinez and her fellow plaintiffs. "But you can do

much more. There's plenty of room for improvement."

He went on to list a number of measures Democrats have proposed in recent years, including establishing local control over drilling operations, reforming how the commission operates, and changing "forced pooling" rules that allow companies to extract fossil fuels without the consent of every affected property owner.