POLICY MEMORANDUM

DATE: October 6, 2022
FROM: County Attorney's Office
TO: Board of County Commissioners; Planning Commission
RE: Chapter 90 Oil & Gas Development: Extent of Financial Assurances to the County

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I. INTRODUCTION

As part of the public review process, the county has received public comment regarding the first draft of Chapter 90. Two policy related questions have been identified as needing further clarity and direction from the Board, namely:

1. Should the county's financial assurances apply to matters beyond surface impacts, specifically plugging and abandoning[1] a well? If so, what policy directions should guide staff's next draft recommendation with respect to such additional financial assurance amount?
2. Should the county's financial assurance include, in addition to site-specific reclamation cost and construction impact financial assurances, a component intended to secure general code compliance (currently proposed at $175,000 per operator)? If so, should the financial assurance be on a "per well" or "per operator" basis and in what amount?

This policy memorandum aims to address these matters by providing background information about the State's approach, the pros and cons of the available options, and the rationale used in the current draft of Chapter 90 to aid the Board and the public during this decision-making process.

II. BACKGROUND

In 2019, the Colorado General Assembly passed SB 19-181 that amended the Oil and Gas Conservation Act of the State of Colorado (the "Act"), which regulates oil and gas development in Colorado. SB 19-181 changed the Colorado Oil and Gas Conservation Commission's ("COGCC") mission from "fostering" to "regulating" oil and gas in a manner that protects public health, safety, welfare, the environment and wildlife resources. The COGCC was required by the Act to conduct a rulemaking regarding financial assurances,

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[1] This memo will generally refer to "P&A" for "plug and abandon," "plugging and abandonment," "plugging and abandoning," and other all variations as is appropriate in the context of the sentence.

which concluded in early 2022 and resulted in new and more robust financial assurance rules at the state level. To provide a better understanding of the rationale that staff relied upon for the first draft of Chapter 90, this memo will address the purpose of financial assurances, state requirements, and what the State's financial assurances cover.

As of September 22, 2022, there are approximately 494 orphaned wells and 968 orphaned sites on the COGCC's list in need of additional work for P&A, reclamation, and/or remediation.[2] By way of comparison, a 2021 report by the Interstate Oil & Gas Compact Commission estimated that Pennsylvania had a total of 27,972 documented orphaned wells (with another 100,000 to 560,000 undocumented orphaned wells) while Kentucky had 14,367 documented orphaned wells (with another 3,000 undocumented orphaned wells) and Oklahoma had 2,799 documented orphaned wells (with another 105,907 undocumented orphaned wells).[3] Several other states had more than 1,000 documented orphaned wells. As of July 1, 2022, there were 80 orphaned sites within La Plata County that included 47 wells in need of P&A.[4]

A. Purpose of financial assurance.

An operator is required to provide financial assurance[5] to conduct oil and gas operations in the State of Colorado. The purpose of financial assurances is to ensure that an operator has the financial ability to operate and perform its obligations in a manner compliant with applicable regulations, including completion of P&A of wells and other facilities as well as reclamation and remediation of the site and soils at the oil and gas location. Financial assurance, then, is one tool in protecting the public health, safety, welfare, the environment, and wildlife resources. Financial assurances also aim to protect non-operators (whether local government, state government, their residents, or others) from bearing the financial burdens of operators who fail to operate in full compliance with applicable regulations.

B. State requirements for financial assurance.[6]

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[2] See COGCC Orphaned Well Program FAQ, p. 1, available at: https://cogcc.state.co.us/documents/OWE/2022%20OWP%20FAQ.pdf. "Remediation" means the process of reducing the concentration of a contaminant or contaminants in water or soil to the extent necessary to ensure compliance with the concentration levels provided by the COGCC and other applicable groundwater standards and classifications.

[3] See Idle and Orphan Oil and Gas Wells: State and Provincial Regulatory Strategies 2021, Table 3 "Documented and Undocumented Orphan Wells (2018-2020), by Interstate Oil & Gas Compact Commission, available at: https://iogcc.ok.gov/sites/g/files/gmc836/f/iogcc_idle_and_orphan_wells_2021_final_web.pdf.

[4] See either PDF or Excel version of COGCC's 2022 Comprehensive Orphan Wells and Orphaned Sites List dated July 2, 2022 and available at: https://sites.google.com/state.co.us/cogcc-owp/reports?authuser=0.

[5] "Financial assurance" means a surety bond, cash bond, letter of credit, sinking fund, third-party trust fund, escrow account, lien on property, security interest, or other instrument or method accepted by the Commission to ensure an Operator is able to perform its obligations under the Act and the Commission's Rules.

[6] This memo focuses on the general financial assurance required by COGCC for the most common types of facilities. COGCC Rules include other, additional financial assurances that are more unique to the situation or facility. See, e.g., centralized E&P waste management facilities (Rule 703.a); site-specific remediation plans for which the COGCC director determines the general financial assurance is inadequate (Rule 703.b); seismic operations (Rule 703.c); gas gathering, gas processing, and underground gas storage facilities (Rule 703.d); produced water transfer systems (Rule 703.e); commercial disposal well facilities (Rule 703.f); and surface owner protection bonds (Rule 704).

The new financial assurance rules that went into effect on April 30, 2022, require each operator to submit a Financial Assurance Plan (the "Plan") to the COGCC on or before December 31, 2022[7] that shows the operator's financial capacity to fulfill its regulatory obligations. The Plans should include information such as total number of wells, production data, well status and designation data, well P&A data, inactive well list, and asset retirement planning (and in one instance a consideration of low producing wells). The Plans also require a certification of financial capability signed by a corporate officer of the operator. The rules set forth six (6) "Options" for Financial Assurance Plans,[8] and an operator must meet the criteria for a specific option to qualify for that Plan. The available options are largely dependent on the operator's average daily per well production but there are exceptions if operators do not meet the criteria of certain options or may be based on individual circumstances if appropriate. After the Plan is filed with the COGCC, the amount of financial assurance is determined. Most of the options contemplate a "blanket" bond component (technically established on a per well basis according to production levels and number of wells) as well as "single well financial assurance" ("SWFA") or other site-specific financial assurance for portions of the operator's low producing, inactive, and out of service wells. Single well financial assurance is defined[9] as follows:

Single well financial assurance (SWFA) means either:

a. The sum of an Operator's demonstrated costs of plugging and abandonment[10] of the well[11] and the associated and apportioned reclamation[12] cost for the well, which is calculated by dividing the demonstrated reclamation costs by the number of wells on the oil and gas location or at the oil and gas facility; or
b. The sum of the single well plugging and abandonment cost for the single well location reclamation cost.
c. For purposes of this definition, costs are calculated as follows:
    1. Location reclamation cost means the Commission's estimated costs of reclamation at an oil and gas location or an oil and gas facility, which is set at $100,000 per location or facility.
    2. Single well location reclamation cost means the cost of reclamation attributable to a single well on an oil and gas location or at an oil and gas facility, which is calculated by dividing the location reclamation cost by the number of wells on the oil and gas location or at an oil and gas facility.
    3. Single well plugging and abandonment cost means the Commission's estimated costs of plugging and abandonment of the well as follows:
        A. For a well drilled to a total vertical depth of 4,000 feet or less: $10,000 of financial assurance.

[7] COGCC Rule 702.b.(1)A.
[8] COGCC Rule 702.d.(1)-(6).
[9] COGCC Rule 100.
[10] "Plugging and abandonment" means the permanent plugging of a well, the removal of its associated production facilities, and the abandonment of its flowline(s).
[11] "Well" means an oil or gas well, a hole drilled for the purpose of producing oil or gas (including non-hydrocarbon gases such as carbon dioxide and helium), a Class II UIC well, a stratigraphic well, a gas storage well, or a well used for the purpose of monitoring or observing a reservoir.
[12] "Reclamation" means the process of returning or restoring the surface of disturbed land to its condition prior to the commencement of oil and gas operations.

B. For a well drilled to a total vertical depth of more than 4,000 feet and less than or equal to 8,000 feet: $30,000 of financial assurance.
C. For a well drilled to a total vertical depth of more than 8,000 feet: $40,000 of financial assurance.

d. Both the Operator's demonstrated costs and the Commission's estimated costs are subject to adjustment for inflation pursuant to Rule 707a(1)A.

The COGCC's financial assurance options are summarized below. These options are primarily intended to protect the state from the risk of an operator's failure to perform its P&A and reclamation[13] responsibilities to the state under the Act and COGCC Rules with respect to wells and well sites (other types of oil and gas facilities may be subject to unique financial assurances). The COGCC Rules do not require or allow that the County would have the ability to draw upon the financial assurances provided to COGCC.

Option 1

Plan Threshold: Over the previous 12 months, the operator's average daily per-well production exceeds either (A) 60 BOE (barrels of oil equivalent) or (B) 90 MCFE (thousand cubic feet equivalent).[14]
Financial Assurance: Under this Option, blanket financial assurance applies (excluding out of service wells[15]) and the amount depends on the number of wells as follows:

a. $12,000 per well if the operator operates less than or equal to 50 wells;
b. $10,000 per well if the operator operates more than 50 wells and less than or equal to 150 wells;
c. $5,000 per well if the operator operates more than 150 wells and less than or equal to 1,500 wells;
d. $3,000 per well if the operator operates more than 1,500 wells and less than or equal to 4,000 wells; or
e. $1,500 per well if the operator operates more than 4,000 wells.[16]

As to low producing wells[17], the operator's blanket bond will cover low producing wells up to 10% of the Operator's total number of wells (excluding out of service wells). Operators are required to provide SWFA for any low producing well that exceeds the 10% threshold. Financial assurance for inactive[18] and out of service wells is determined

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[13] Note the heading of COGCC Rule 702 suggests, consistent with our recollection of COGCC rulemaking dialogue and deliberations, that the primary financial assurances are not intended to address remediation, the need for which is often not discovered until other P&A and reclamation activities have begun. Rather, remediation will primarily be dealt with under Rule 703.b when the costs of remediation are likely to extend beyond the originally anticipated costs of reclamation.
[14] COGCC Rule 702.c.(1). Option 1 will likely include the highest-producing operators in the state unless such operators attempt a uniquely tailored plan under Option 5 or a $40,000,000.00 blanket bond under Option 6.
[15] "Out of service well" means a well that an operator intends to plug and abandon and for which a … out of service well designation has been submitted by the operator. For all options, financial assurance for out of service wells can be set by Rule 434.d.
[16] COGCC Rule 702.d.(1)B.
[17] "Low producing well" means an oil or gas well that produces a daily average of less than 2 BOE or 10 MCFE of gas over the previous 12 months. An inactive well is also a low producing well.
[18] "Inactive well" means an oil or gas well that has been shut-in and has not produced for a period of 12 consecutive months; an oil or gas well that has been temporarily abandoned for a period of 6 consecutive months; a class II UIC well

by the director per other rules and circumstances.[19] Transferred low producing wells require SWFA for any low producing well that exceeds 10% of the Operator's total number of wells.

Option 2

Plan Threshold: Over the previous 12 months, the operator's average daily per-well production either (A) exceeds 15 BOE and is less than or equal to 60 BOE or (B) exceeds 22 MCFE and is less than or equal to 90 MCFE.[20]
Financial Assurance: Under this option, blanket financial assurance applies (excluding out of service wells) and the amount depends on the number of wells as follows:

a. $18,000 per well if the operator operates less than or equal to 50 wells;
b. $15,000 per well if the operator operates more than 50 wells and less than or equal to 150 wells;
c. $12,000 per well if the operator operates more than 150 wells and less than or equal to 1,500 wells;
d. $10,000 per well if the operator operates more than 1,500 wells and less than or equal to 4,000 wells; or
e. $8,000 per well if the operator operates more than 4,000 wells.[21]

Low producing wells, out of service wells, inactive wells, and transferred low producing wells are all handled very similarly as under Option 1 (with a different low producing well threshold of 5% rather than 10% of the total portfolio).

Option 3

Plan Threshold: Over the previous 12 months, the operator's average daily per-well production either (A) exceeds 2 BOE and is less than or equal to 15 BOE or (B) exceeds 6 MCFE and is less than or equal to 22 MCFE.[22]
Financial Assurance: The total amount of financial assurance under this Option will be paid over time and requires SWFA for every well unless the Commission or COGCC director approve an alternative amount. The presumptive annual contribution will be 5% of the total SWFA required and will continue in that fashion until the financial assurance meets or exceeds the required amount (so spread out over approximately 20 years).[23]

Option 4

Plan Threshold: Over the previous 12 months, the operator reports zero total production, or the operator does not meet the requirements for Options 1, 2, 3, or 6.[24]
Financial Assurance: The total amount of financial assurance under this Option will be paid over time and requires SWFA for every well unless the Commission or COGCC

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which has not been utilized for a period of 12 consecutive months; or a suspended operations well or a waiting on completion well with no activity other than monthly bradenhead monitoring for more than 24 consecutive months.

[19] COGCC Rule 702.d.(1)B.ii with reference to Rules 434.c and d.

[20] COGCC Rule 702.c.(2).

[21] COGCC Rule 702.d.(2)B.

[22] COGCC Rule 702.c.(3).

[23] COGCC Rule 702.d.(3)B-C.

[24] COGCC Rule 702.c.(4). Option 4 will likely include the lowest-producing operators in the state unless such operators attempt a uniquely tailored plan under Option 5.

director approve an alternative amount. The presumptive annual contribution will be 10% of the total SWFA required and will continue in that fashion until the financial assurance meets or exceeds the required amount (so spread out over approximately 10 years).[25]

Option 5

Plan Threshold: Plan based on individual circumstances that demonstrate the operator is financially capable of fulfilling all of the obligations imposed by the Act and COGCC rules. This option is only applicable to operators whose circumstances make it unnecessary or unreasonable for the Operator to submit the financial assurance amounts in Options 1-4 or for other exceptional circumstances.[26]
Financial Assurance: This Option requires financial assurances be paid within 90 days of approval of an Operator's custom Plan as well as the Operator's justification for not pursuing a Plan pursuant to Options 1-4. The custom Plan must specify the amount of financial assurance for each well, including the various categories of status and designation (low producing, out of service, etc.). In addition to the certification of financial capability (required under all options), operators requesting an option 5 plan must also include a statement of current net worth, attached financial statements, and an unmodified opinion issued by an independent auditor.[27]

Option 6

Plan Threshold: Over the previous 12 months, the operator's average daily per-well production either (A) exceeds 40 BOE or 60 MCFE (if the operator is a publicly traded company) or (B) exceeds 60 BOE or 90 MCFE (if the operator is a private company).[28]
Financial Assurance: Financial assurance under this option will be a comprehensive financial assurance that covers all wells (excluding out of service wells) in an amount equal to $40,000,000. Low producing wells, out of service wells, inactive wells, and transferred low producing wells are all handled very similarly as under Options 1 and 2 (with a different low producing well threshold of 25% rather than 5% or 10% of the total portfolio).[29]

C. What State financial assurance covers.

The required COGCC financial assurance that each operator must provide covers P&A and reclamation of their well site(s).[30] It remains somewhat unclear whether the COGCC can or will draw upon its financial assurances to satisfy requirements of the Act

[25] COGCC Rule 702.d.(4)B-C.
[26] COGCC Rule 702.c.(5).
[27] COGCC Rule 702.d.(5)B-D.
[28] COGCC Rule 702.c.(6).
[29] COGCC Rule 702.d.(6)B. The $40,000,000 financial assurance under Option 6 is the closest to a true "blanket bond" (in that it is not dependent on number of wells), but even it is subject to potential additional amounts for low producing wells, inactive wells, and out of serve wells. One of the significant advantages for an operator of an Option 6 Plan over Options 1 and 2 (which may allow for lower per well amounts) is that an Option 6 Plan may not need to adjust the total financial assurance amount based on fluctuations (up or down) in total well count.
[30] "Well site" means the areas that are directly disturbed during the drilling and subsequent operation of, or affected by production facilities directly associated with, any oil well, gas well, or injection well and its associated well pad.

or COGCC Rules that are not specifically related to P&A, reclamation, or remediation (such as fines for violations of reporting requirements, etc.).[31]

In addition to the more robust financial assurance required by the new rules, there is also now an Orphaned Well Mitigation Enterprise (the "Enterprise") to assist in the event that no owner, operator, or responsible party is capable of covering the costs of P&A, reclamation, and remediation of an orphaned well[32] and orphaned well sites. The Enterprise is funded by industry through an annual per well fee (either $225 per well or $125 per well depending on production levels)[33] that is expected to generate $10,000,000 annually and continue growing over time to address orphaned wells. There is no mechanism in the COGCC Rules for local governments to make a claim or request for funding from the new Enterprise or spend any of the annual mitigation fees collected in order to perform reclamation or otherwise remedy a violation of county code or county permit requirements. In addition to the funds generated pursuant to the annual mitigation fee, the COGCC expects to receive millions of dollars in the coming years pursuant to the Federal Infrastructure Investment and Jobs Act.

The various COGCC financial assurance types and options are not necessarily designed or expected to cover the full anticipated costs of P&A, reclamation or remediation. The COGCC and its staff have, at different times since 2017, estimated that the average cost to plug, abandon, reclaim, and remediate a single well location for an orphaned well may be around $78,000[34] to $82,500[35] to $92,710.[36] The only wells likely to be covered by adequate financial assurance to fully cover P&A and COGCC reclamation requirements are those wells for which SWFA is required.

III. Relevant Financial Assurance Concepts and Comparisons

A. Issue 1 – Scope of County Financial Assurance

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[31] Compare the language of Rule 701.c.(1) (stating that financial assurance can be used with respect to all obligations under the Act or Rules) to the Rule 100 definitions of cash bond, letter of credit, and surety bond (each stating that such type of financial assurance can be accessed by the COGCC only "if an Operator fails to perform its Plugging and Abandonment, Reclamation, or Remediation obligations" with no mention of any other obligations under the Act or Rules as justifications for taking action against the financial assurance). See also the COGCC's explanation of its "Cash Bond" definition and others in its final Statement of Basis, Specific Statutory Authority, and Purpose (dated March 1, 2022) for the financial assurance rulemaking, which is available at: https://cogcc.state.co.us/documents/sb19181/Rulemaking/Financial%20Assurance/Financial%20Assurance%20SBP%20-%20Final%20Post-Hearing.pdf.

[32] "Orphaned well" means a well for which no owner or operator can be found, or where such owner or operator is unwilling or unable to plug and abandon such well.

[33] COGCC Rule 205.c.(3). The new Enterprise Board can modify the annual fee.

[34] See COGCC staff's first draft Statement of Basis, Specific Statutory Authority, and Purpose (dated June 15, 2021) for the financial assurance rulemaking, p. 3, available at: https://cogcc.state.co.us/documents/sb19181/Rulemaking/Financial%20Assurance/COGCC%20Draft%20Financial%20Assurance%20SBP%206-15-21.pdf.

[35] COGCC response to Senator Scott and Representative Rank's Abandoned Well Inventory Information Request, p. 4, October 4, 2017.

[36] See COGCC Orphaned Well Program FAQ, p. 3, available at: https://cogcc.state.co.us/documents/OWE/2022%20OWP%20FAQ.pdf and Mark Jaffe, *Nearly half of Colorado's 52,000 wells produce little or no oil. Who'll pay to plug them?*, COLORADO SUN (Aug 22, 2021, 4:42 AM), https://coloradosun.com/2021/08/22/colorado-orphan-wells-cost-to-plug/

With respect to policy issue 1, the focus is the scope of oil and gas operations that the County intends to regulate through Chapter 90 of its land use code. More specifically, the policy question is whether the County should require financial assurance that would potentially provide the County with its own financial resources to complete P&A of a well bore (down-hole as opposed to the impacts on the surface) that has been left incomplete (likely by giving it to the state as an orphaned well) by the operator. Staff believes that the following are the most apparent options (though public comments and briefing may identify others):

1. The County only regulates (and only obtains financial assurances related to) traditional land use and surface impacts. In most other instances, the County would generally defer to the regulations, enforcement, and financial assurances of other agencies (primarily COGCC). [Staff believes that this option best characterizes the first draft of Chapter 90.]
2. The County only regulates traditional land use and surface impacts, but obtains financial assurances related to compliance with traditional land use, surface impacts, and P&A requirements. This would likely involve some clarification in Chapter 90 regarding the County's ability to enforce COGCC's P&A requirements and the circumstances under which the County may step in to perform incomplete P&A.
3. The County regulates (and obtains its own financial assurances related to) traditional land use and surface impacts as well as the standards for proper down-hole P&A of wells. The County continues to defer to other agencies for other substantive regulations (such as air quality and water quality).
4. The County regulates (and obtains its own financial assurances related to) all areas of applicable regulations relevant to oil and gas operations for which the County is not clearly preempted by state or federal regulations.

	Pros	**Cons**
County Focus on Land Use and Surface Impacts	• County authority is express and generally accepted by other parties. • County unlikely to receive opposition from COGCC or other regulatory agencies. • County has history and expertise regulating land use and surface impacts. • Neither Colorado nor the County have a particularly severe problem with orphaned wells (compared to other oil and gas states), so the newly funded Enterprise may be sufficient.	• Orphaned wells that are not timely plugged and abandoned pose a risk to public health, safety, and welfare. • The County must rely on others (primarily COGCC) to accomplish the incomplete P&A. • The County would not have clear authority or financial resources to accomplish incomplete P&A independent of COGCC. • COGCC has a significant backlog (though new Enterprise and federal dollars have potential to address the problem).
County	• County might be less reliant	• County does not have

INCLUSION OF SOME LEVEL OF P&A REGULATIONS OR FINANCIAL ASSURANCES	on other agencies like COGCC. • County could have its own financial resources to complete P&A. • County may be able to complete P&A more quickly than waiting on COGCC.	experience or expertise with down-hole issues such as P&A or more technical remediation of spills. • Taking on P&A responsibilities may expose the County to additional costs if the County's financial assurances are inadequate to cover costs. • Unknown whether (unlikely that) Enterprise or federal funds would be available to the County if the County is running a P&A program independent of the state's orphaned well program. • COGCC, other agencies, or members of industry may argue the County lacks authority and/or is preempted. • Companies and equipment able to complete P&A are a limited resource. Adding the County as another entity competing against operators and COGCC for time and equipment may be problematic.

B. Issue 2 – Calculation of General Compliance Portion of Financial Assurance

With respect to policy issue 2, the focus is on a specific component of the County's financial assurances proposed in subparagraph 90-14.III.A.1 to secure general compliance with the County's code. For context, it is important to note what other aspects of financial assurance are separately addressed within the first draft of the regulations. Subparagraph 90-14.II.A.4 is focused on securing completion of final reclamation and proposes that the County obtain financial assurances in the amount of at least[37] 115%[38] of the estimated costs to perform the final reclamation. In addition to final reclamation, the staff has also proposed obtaining financial assurance in the amount of 115% of the estimated costs to perform any interim reclamation pursuant to subparagraph 90-14.II.A.3. In addition to final reclamation and interim reclamation, the first draft also proposes that the County obtain additional financial assurances pursuant to subparagraph 90-14.II.A.2 when work approved by the County is anticipated to use (and thus poses a risk of damage by) heavy equipment on county roads. Thus far, these

[37] Pursuant to subparagraph 90-14.III.A.5, the County's financial assurance standards are intended to be a default minimum requirement that may be increased (but not decreased) on a case-by-case basis.
[38] Staff has proposed 115% as a benchmark consistent with the County's approach in other contexts, such as subparagraph 74-9.I.C.1 for work performed in the County's right of way.

three categories of financial assurances are intended to protect the county and its residents from bearing the costs of damages or unperformed work in violation of specific requirements of the code or applicable permit.

The final component of the first draft of the financial assurance regulations, in subparagraph 90-14.III.A.1, is intended to provide financial assurance to the County that the operator will generally comply with all other requirements of the code and any permits or approvals issued by the County (such as annual reporting, incident specific reporting, maintaining required insurance, meeting substantive standards and conditions of approval related to mitigating adverse impacts not associated with interim or final reclamation, etc.). Some of these items of general compliance are not easily subject to an upfront calculation of potential costs (e.g., the County does not require cost estimates for every mitigation measure required of an operator), so the costs will likely not be known until the violation is discovered and addressed. Others of these items of general compliance are not likely to be unique to a specific oil and gas location or oil and gas facility (e.g., failures to submit annual reports, notices of transfers, proof of insurance, etc. are likely to be by an operator with respect to all assets within the County). In light of this complexity and the fact that other key site-specific financial assurances are addressed elsewhere, staff's proposal in the first draft was for this general compliance aspect of financial assurance to be more predictable and uniform for all operators within the County.

The amount proposed in the first draft for the general compliance financial assurance is $175,000 per operator. Under existing subsection 90-44.I, the County distinguishes between operators based on number of total minor facilities in the County. For smaller operators (with 15 or fewer minor facilities), the financial assurance is a minimum of $7,000 per facility with a maximum of $105,000. For larger operators (with more than 15 minor facilities in the County), the financial assurance is a minimum of $7,500 per facility with a maximum of $175,000. These financial assurances are intended to secure performance of all uncompleted conditions of approval (which in at least some, if not all, cases should include some operational and/or final reclamation requirements that would remain for the life of the facility). Major oil and gas facilities are handled separately under subsection 90-44.II and are not subject to these maximum amounts. Staff believes that the current per facility amounts of $7,000 or $7,500[39] are inadequate to secure full compliance with the code, especially when considering the full costs of future final reclamation. Depending upon the financial benefit gleaned through the noncompliance, such amount may merely be a "parking ticket". Moreover, the caps of $105,000 and $175,000 are inadequate, especially in the event that a single operator was responsible for more than 15 facilities in the County (e.g., if a theoretical operator had 30 facilities, the per facility financial assurance intended to secure performance of any and all permit requirements would be a mere $5,833.33, barely enough to cover 1/3 of the maximum allowable per day fine). Staff's initial intent was to treat the new financial assurances for road impacts, interim reclamation, and final reclamation as additional new amounts and standardize the underlying financial assurance amount for compliance at the current maximum level of $175,000 per operator.

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[39] Note that subparagraph 90-18.I.D.1 would allow for a single fine of up to $15,000 per day for some violations of the County's code, which amount matches the upper limits of COGCC's fines under Rule 525.c.

Staff believes that the following are the most apparent options (though public comments and briefing may identify others):

1. The County calculates the general compliance portion of its overall financial assurance on a per operator basis at a significant enough level to incentivize full and timely compliance with all County code and permit requirements. [Staff believes that this option best characterizes the first draft of Chapter 90.]
2. The County calculates the general compliance portion of its overall financial assurance on a per operator basis at a different level (higher or lower) than the $175,000 per operator proposed in the first draft.
3. The County calculates the general compliance portion of its overall financial assurance on a per well (or "per site" or "per facility" to better capture all types of major and minor oil and gas facilities and locations).

	PROS	**CONS**
GENERAL COMPLIANCE ON A PER OPERATOR BASIS	• Easy and predictable to operators. Need not fluctuate or otherwise be adjusted simply based on changes in well count (or other increases or decreases to numbers of facilities). • Easy to administer for County. • More clearly includes operator/portfolio level compliance such as annual reporting, insurance, etc.	• Does not differentiate the level of risk from or burden on different sized operators who operate a different number of wells or other facilities.
GENERAL COMPLIANCE ON A PER WELL (OR PER SITE) BASIS	• Allows County to differentiate between different sized operators who operate a different number of wells or other facilities.	• More difficult to administer, because may require adjustments for each new, closed, purchased, or sold well (or oil and gas location or facility other than wells). • The number of wells may not have a direct relationship to general compliance issues such as annual reporting, insurance, etc. • May benefit from additional clarity that all portions of all financial assurance required by the County are accessible by the County for any compliance issues.