

MEMORANDUM

TO: Joint Budget Committee Members

FROM: Carly Jacobs, JBC Staff (303-866-3147)

SUBJECT: Department of Natural Resources Budget Amendment BA-1A to Authorize the Addition of 12.0 FTE to the Oil and Gas Conservation Commission

DATE: March 13, 2015

Oil and Gas Task Force Recommendations

The Oil and Gas Task Force was established by Executive Order B 2014-05 to examine issues associated with oil and gas development, particularly those related to the regulatory role of state and local governments. On February 27, 2015 the Task Force submitted a series of policy recommendations to the Governor, which included a proposal to authorize the addition of 12.0 FTE to the Oil and Gas Conservation Commission (OGCC). If implemented, the Task Force recommendation would represent a 12.3 percent increase in total staffing for the OGCC.

- *Field Inspectors – 3.0 FTE*
The recommendation includes the addition of three field inspectors to increase the frequency of inspections and keep pace with growth in the number of active wells in the state.
- *Environmental Protection Specialists – 3.0 FTE*
The recommendation includes the addition of three environmental protection specialists to conduct inspections and oversee remediation projects in response to changes in reporting thresholds and an increase in spills identified by inspection staff.
- *Engineering Staff – 3.0 FTE*
The recommendation includes the addition of three engineers to conduct documentation audits on integrity tests of flowlines and production facilities, which are the largest cause of reported spills and releases.
- *Hearings Officer and Complaint Intake Specialist – 2.0 FTE*
The recommendation includes the addition of two new staff members dedicated to processing citizen complaints as a way to increase engagement with the public.
- *Information Tech/Junior Data Analyst – 1.0 FTE*
The recommendation includes one new position, specializing in data management, to respond to information requests from the public and other stakeholders.

The Governor submitted a formal budget amendment based on the Task Force recommendations at 1:30 pm on Thursday March 12, 2015. The request is detailed below. Given the time constraints, staff is not making a recommendation as staff has not had the opportunity to fully research the request.

March 13, 2015

Department Budget Amendment BA-1A

The requested budget amendment includes an increase of \$1,364,713 cash funds and 12.0 FTE for FY 2015-16. This would provide funding for: staff salaries; field and safety equipment; vehicles and mileage; travel expenses; and continuing education for new staff, in accordance with Task Force recommendations. The following table shows the cost of each component of the budget amendment:

Breakdown of Funding for Task Force Recommendations and BA-1A				
	Personal Services	Operating Expenses	Total	FTE
Field Inspectors	\$240,628	\$68,700	\$309,328	3.0
FLIR Camera	0	97,632	97,632	0.0
Environmental Protection Specialists	290,200	41,356	331,556	3.0
Engineering Staff	316,379	34,189	350,568	3.0
Hearings Unit Staff	169,814	13,206	183,020	2.0
Data Analyst	76,206	6,403	82,609	1.0
Vehicles	<u>0</u>	<u>10,000</u>	<u>10,000</u>	<u>0.0</u>
Total	\$1,093,227	\$271,486	\$1,364,713	12.0

Please note that new FTE for the OGCC are often approved with salaries above the range minimum due to competition with the oil and gas industry for qualified candidates. Recent requests for additional FTE have included salaries between 25.0 and 31.0 percent above the range minimum based on the most recent hires in equivalent positions. The Department indicated that the recommended FTE would also require salaries above the range minimum and incorporated available salary data from recent hires into the cost estimate.

1) Field Inspectors (3.0 FTE at 30.0 percent above range minimum)

The requested budget amendment includes three new field inspectors at a cost of \$309,328 cash funds. The Department would locate new inspectors in the Denver Julesburg (DJ) Basin on the Front Range, which is expected to account for more than 70.0 percent of all new wells in FY 2015-16. Assuming active well count grows as projected, the addition of three new inspectors in FY 2015-16 would keep average inspection frequency around 1.8 years through the end of FY 2016-17. With the current number of inspectors (27.0 FTE), inspection frequency will average 2.0 years through FY 2016-17, which is consistent with OGCC performance objectives.

The average inspection frequency has more than doubled since FY 2008-09 and is now at an agency best of 1.7 years (i.e. on average, each well is inspected once every 1.7 years). However, the OGCC is currently in the process of developing a risk-based inspection program which involves assigning a risk profile to each well and production facility, and inspecting high-risk sites more intensively. Sites designated as high risk will require more time to inspect which may ultimately impact the overall inspection frequency and workload for inspectors.

2) Forward Looking Infrared (FLIR) Camera

The requested budget amendment also includes one Forward Looking Infrared (FLIR) camera at an initial cost of \$97,632 cash funds. FLIR cameras are used to detect the emission of volatile organic compounds from industrial equipment, flowlines, and other production facilities. These leaks are often invisible and can be the source of air pollution and odors that drive complaints from the public. The OGCC currently has two FLIR cameras in the field, one on the West Slope and one in the Front Range, but indicated that the third camera would allow the new inspectors to detect and document leaks more quickly in high-development areas.

The Colorado Department of Public Health and Environment (CDPHE) is the agency that is primarily responsible for air quality issues associated with the development and production oil and gas. Starting in FY 2013-14, CDPHE has had four FLIR cameras in operation as part of a pilot program to enforce air quality standards at all industrial facilities. A FY 2015-16 budget request from CDPHE was approved by the Committee to establish permanent funding for the program and associated FTE. To some extent the two agencies are duplicating efforts and equipment, but neither is currently in a position to take over all of the workload related to the regulation of air quality for oil and gas development.

3) Environmental Protection Specialists (3.0 FTE at 23.0 to 30.0 percent above range minimum)

The requested budget amendment includes \$331,556 cash funds and 3.0 FTE for three additional environmental protection specialists (EPS) in response to an increase in the number of environmental projects and spill reports. Department data shows a 60.0 percent increase reported spills between FY 2012-13 and FY 2013-14. This is primarily attributable to the addition of 11.0 FTE to the field inspection staff in the 2013 Long Bill. The significant growth in the number of inspectors led to the identification of more potential spills and other environmental issues, which are generally referred to environmental protection specialists for assessment. Like field inspectors, EPS workload is concentrated in the DJ Basin because of heavy development. The current ratio of wells per EPS in that area is approximately 36.4 percent higher than the OGCC's average recommended workload. According to the Department request, the addition of one field-based EPS and one EPS technician (2.0 FTE) would reduce workload closer to the target ratio of 6,000 wells per specialist.

The third EPS position (1.0 FTE) would be designated as a Comprehensive Drilling Plan (CDP) Specialist. The CDP process was established in 2008 to facilitate collaboration between the OGCC, operators, local governments, and other stakeholders during the planning stages of large-scale oil and gas development. Advanced planning for oil and gas locations allows for the early identification and minimization of environmental and surface use impacts. However, only one CDP has been completed to date, in part because the process is complex and time-consuming for OGCC staff. The Department indicated that the addition of a CDP specialist would be consistent with the goals of the Task Force as they pertain to the coordination between state and local governments, especially on development near urban areas.

4) Engineering Staff (3.0 FTE at 22.0 to 33.0 percent above range minimum)

The requested budget amendment includes \$350,568 cash funds and 3.0 FTE for three engineers. The Department would use the additional engineering staff to establish a new Facilities Integrity Group. The engineers would have expertise in production facility equipment and be responsible for designing and implementing a risk-based management program focused on the installation and maintenance of things like process piping, flowlines, tanks, and valves.

According to a February 2014 report on risk-based inspections, failure of production facility equipment is the most common cause of spills and releases, accounting for 75.7 percent of operator reported spills over the last five years. The OGCC has never directly regulated these high-risk points in the production process before, but would use the new engineering staff to assist with the conversion to a risk-based approach to inspections and regulation. According to Department, the new program would require two full years of development, including stakeholder conversations, guidance to operators, and rulemaking before being rolled out to industry.

5) Hearings Unit Staff (2.0 FTE at 23.0 and 35.0 percent above range minimum)

The requested budget amendment includes \$183,020 cash funds and 2.0 FTE for one complaint specialist and one Notice of Alleged Violation (NOAV) specialist. Citizen complaints are currently assigned to field inspectors, who are required to handle all aspects of complaint processing in addition to other duties. The Department found that complaint response can significantly reduce the number of completed inspections. In one instance, inspections decreased by 50.0 percent while several complaints were being processed. The recommended complaint specialist would be responsible for handling all aspects of the complaint process in a timely manner, including: intake, data entry, tracking, closure, and communication back to the complainant. This would free up inspector hours and allow the OGCC to engage with the public more actively, which was a central objective of the Task Force.

The requested Notice of Alleged Violation (NOAV) Specialist would take over some of the writing tasks associated with the preparation and presentation of enforcement actions to the Commission. Each NOAV identifies the legal and factual bases for the alleged violations and specifies corrective actions that are required to bring the operator back into compliance. OGCC technical and field staff are currently responsible for generating supporting materials when NOAVs result in proceedings before the Commission. This takes time away from their core responsibilities and requires legal writing skills. Additionally, the Department expects that recent changes in rules related to penalties will increase the number of enforcement matters before the Commission, resulting more work for technical and field staff. The OGCC indicated that the recommended position would reduce enforcement-related workload for other staff that do not have legal expertise, and help process NOAVs more efficiently.

6) Information Technology Data Analyst (1.0 FTE at 23.0 percent above range minimum)

The requested budget amendment includes \$82,609 cash funds and 1.0 FTE for one data analyst, in accordance with Task Force recommendations. This position would be responsible for database management, as well as developing queries and reports using data submitted to the OGCC. The Department has indicated that recent public attention to oil and gas development and operations has significantly increased the demand for OGCC data. In some instances, information requests include all or large portions of the OGCC database which require a substantial amount of staff time to assemble. This is compounded by the fact that recent rule changes have increased the volume of information submitted through the permitting process and other forms. The OGCC would use this data analyst position to manage the new data being submitted to the agency and develop search methods to streamline the extraction of information in response to requests from the public and other stakeholders.

7) Vehicles for Inspectors and EPS Field Staff

The request includes \$10,000 cash funds to provide five vehicles for new inspectors and environmental protection specialists.

Impact to the Severance Tax Operational Fund

All funding for the requested FTE and associated expenses would be cash funds from the Severance Tax Operational Fund. The OGCC is classified a Tier I program and is authorized by statute to receive up to 35.0 percent of available revenue in the Operational Fund (Section 39-29-109.3 (1) (a) (I), C.R.S). Like other Tier I programs, the OGCC currently accounts for a much smaller percentage of available revenue than statute allows: 3.2 percent in FY 2014-15. Adding an additional appropriation of \$1.4 million for the Task Force recommendations would only bring the OGCC up to 4.0 percent of available revenue, well under the statutory cap.

The reserve requirement for Tier I programs is equal to one full year of operating appropriations. This has the effect of doubling the impact of any increases in funding, and would apply to any Operational Fund appropriation used to support the Task Force recommendations. However, current fund balance projections show \$44.7 million in available revenue in FY 2015-16 and \$63.1 million in FY 2016-17, which would be sufficient to support the \$2.8 million (appropriation plus reserve) the recommendations would require based on Department estimates.

Overall, severance tax revenues are notoriously volatile and will continue to reflect the recent decline in oil prices and swings in future market conditions. The December 2014 LCS Forecast showed a 37.0 percent decrease in revenue between FY 2014-15 and FY 2015-16, but the last few years of exceptional revenues have established enough of a balance to insulate Operational Fund programs in the near-term. Projections show that proportional reductions will not be required in FY 2015-16 or FY 2016-17, but there is no guarantee that sizeable fund balances will continue to materialize in future years. Any ongoing decrease in revenue could ultimately affect Tier II programs, which is an important consideration when authorizing new appropriations from the Operational Fund.

Leased Space Considerations

The Department's initial request for FY 2015-16 included funding for the OGCC to lease an additional 2,413 square feet of office space to accommodate existing staff, 2.0 new FTE added in FY 2015-16, and any future staffing increases. The Committee approved the Department request and the OGCC has confirmed that the new contract will fall within the requested amount (\$43,233 cash funds). The Department has indicated that the additional leased space would also accommodate the office-based FTE from the Task Force recommendation. However, if the recommendations are implemented, all of the new office space would be occupied with no available space for any future staffing increases.