



## Colorado Supreme Court rules in *COGCC v. Martinez* that the law requires balance

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On January 14, 2019, the Colorado Supreme Court issued its anxiously-awaited ruling on the authority of the Colorado Oil and Gas Conservation Commission (“COGCC”) to prioritize environmental protection over oil and gas development. In *COGCC v. Martinez* (Case No. 17SC297; 2019 CO 3), the Court rejected the assertion that environmental protection must take precedence. Instead, it concluded that, in crafting the Colorado Oil and Gas Conservation Act (“Act”), “the legislature’s intent was ... to minimize adverse impacts to public health and the environment while at the same time ensuring that oil and gas development, production, and utilization could proceed in an economical manner.”

The genesis of *Martinez* is the COGCC’s decision not to consider a rule proposed by a group of environmentally-conscious students. Their proposed rule explicitly required that no drilling permit may be issued unless it is scientifically shown that the proposed development will not result in a cumulative adverse impact on health and the environment. In declining to institute rulemaking, the COGCC determined that the rule contradicted the Act and that the agency’s resources should be used on other rulemakings already underway.

Consequently, the *Martinez* decision addressed two primary issues. First, the Court grappled with the meaning of the Act and the General Assembly’s intent regarding the treatment of the interests of environmental protection and oil and gas development. Second, the Court faced a challenge to the COGCC’s decision not to consider the students’ proposed rule.

The Court first concluded that the Act is ambiguous with respect to its treatment of environmental and developmental interests. In particular, the Court found the Act’s use of the language “in a manner consistent with” and “taking into consideration cost-effectiveness and technical feasibility” created that uncertainty. As a result, it looked at evolution of the Act’s text since its creation and the statements of those State Representatives sponsoring the operative amendments to the Act. On the basis of those factors, the Court reasoned that the COGCC cannot “condition all new oil and gas development on a finding of no cumulative adverse impacts to public health and the environment . . . .”

To the contrary, the Court concluded “we do not believe that the pertinent provisions of the Act allow the Commission to condition one legislative priority (here, oil and gas development) on another (here, the protection of public health and the environment).” Therefore, while the COGCC must mitigate environmental impacts, it must also consider the cost-effectiveness and

technical feasibility of mitigation measures. The Act, according to the *Martinez* court, does not allow the COGCC to promote one policy goal over the other; rather, consideration of each is the objective.

The *Martinez* decision, however, does not delve into the precise manner in which the COGCC must balance the interests of oil and gas development and environmental protection. Instead, it likely opens the door to increased challenges to the environmental impact of drilling permits and raises the prospect of legislation or additional COGCC rulemaking pertaining to the manner in which the agency resolves those challenges.

Contact Beatty & Wozniak's Commission and Litigation groups for more information on the *Martinez* decision. [The decision may be found here.](#)