



# The Future of Oil and Gas Development in Colorado – Appeal by Attorney General of the Martinez Case Raises the Stakes

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On May 18, 2017, the Colorado Attorney General filed an appeal with the Colorado Supreme Court seeking to overturn the recent 2-1 decision of the Colorado Court of Appeals which arguably conflicts with the long-standing interpretations embraced by the Colorado Oil and Gas Conservation Commission (“OGCC”) related to its organic statute. See *Martinez v. Colo. Oil & Gas Conservation Comm’n*, 16 CA 0564, 2017 COA 37. The *Martinez* decision, if upheld by the Supreme Court, has major implications for all fossil fuel (oil, gas, and coal) as well as hardrock mineral development in the state of Colorado.

The Attorney General’s appeal argues that, in overturning the district court decision which upheld the OGCC decision to deny a rulemaking which would have effectively revised the statutory obligations of the agency, the Court of Appeals has elevated environmental protection policies above all other factors which are required by statute to be considered by the OGCC in implementing its legal obligations.

The Attorney General summarized the issue presented in its *petition for certiorari* on behalf of the OGCC asking that the *Martinez* decision be overturned as follows:

For decades, the Colorado Oil and Gas Conservation Commission has interpreted its organic statute, the Oil and Gas Conservation Act, to strike a balance between fostering the production of oil and gas resources and pursuing other competing policy objectives. Based on that understanding, the Commission has enacted comprehensive rules that make Colorado a nationwide leader in oil and gas regulation. Courts have confirmed that the Act requires the Commission to weigh various policy considerations as factors in its decision-making. Below, however, the court of appeals rejected the Commission’s long-settled interpretation. In a published 2–1 decision, the court held that rather than balancing competing public policies, the Act prioritizes one policy at the expense of others. Under this view, the Commission is permitted to disregard the Act’s directive to foster responsible oil and gas development and enact rules that would entirely prohibit oil and gas related activity unless it can occur with zero direct or cumulative environmental impact.

The question presented is as follows: When the Commission engages in rulemaking, is it permitted to disregard the Act’s policy of fostering oil and gas development in Colorado?

In announcing the filing of the petition for certiorari, Attorney General Cynthia H Coffman decided to disagree with Colorado Governor John Hickenlooper who had earlier ordered her NOT to appeal the Court of Appeals decision.

Spencer Fane will continue to monitor developments related to this case. Here is a link to the Attorney General’s press release which attaches a copy of the *petition for certiorari*. The press release also has a link to a copy of her letter to the Governor.

<https://coag.gov/press-room/press-releases/05-18-17>

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