



BEFORE THE OIL & GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO

IN THE MATTER OF THE PROMULGATION AND) CAUSE NO. 1
ESTABLISHMENT OF FIELD RULES TO GOVERN)
OPERATIONS FOR THE NIOBRARA AND CODELL) DOCKET NOS. 190300337
FORMATIONS, WATTENBERG FIELD, BROOMFIELD)
COUNTY, COLORADO) TYPE: GENERAL
) ADMINISTRATIVE
)
) ORDER NO. 1-236

REPORT OF THE COMMISSION

The Commission heard this matter on March 12, 2019, at the Ralph L. Carr Colorado Judicial Center, 1300 Broadway, First Floor, Denver, Colorado, on the initiation of the Commission to determine whether the Form 2s and the Form 2A filed by Extraction for development in the lands covered by Order Nos. 407-2256 and 407-2274 comport with the October 24, 2017 Amended and Restated Oil and Gas Operator Agreement between Extraction and the City and County of Broomfield.

The Commission finds as follows:

1. Extraction Oil and Gas, Inc., Operator No. 10459 ("Extraction" or "Applicant") is an interested party in the subject matter of the above referenced hearing.
2. Wildgrass Oil and Gas Committee ("Wildgrass" or "WOGC") is an interested party in the subject matter of the above-referenced hearing.
3. Due notice of time, place and purpose of the hearing has been given in all respects as required by law.

PROCEDURAL HISTORY

4. On July 13, 2017, Extraction filed an amended application in Docket No. 170900598 and an application in Docket No. 171000749 to establish an approximate 1,600-acre drilling and spacing unit covering the following lands (the "Lowell South Unit"), with up to 20 horizontal wells within the unit, for production of oil, gas, and associated hydrocarbons from the Niobrara and Codell Formations:

Township 1 South, Range 68 West, 6th P.M.

Section 7: S½
Section 18: All
Section 19: All

5. On August 28, 2017, Wildgrass Master Association filed a protest to Docket No. 170900598.
6. On October 6, 2017, Wildgrass Master Association filed a protest to Docket No. 171000749.

7. On October 10, 2017, Wildgrass Oil and Gas Committee (“WOGC”) filed a protest to Extraction’s application in Docket No. 171000749.

8. On October 24, 2017, Extraction and the City and County of Broomfield executed the Amended and Restated Oil & Gas Operator Agreement (the “Operator Agreement”) that governs Extraction’s operations on numerous spacing units within the City and County of Broomfield including the Lowell South Unit and the Livingston Pad.

9. On October 24, 2017, the Commission continued Docket Nos. 170900598 and 171000749 to the December 11-12, 2017 hearing at the request of WOGC and Wildgrass Master Association.

10. On December 1, 2017, WOGC and Wildgrass Master Association reached a negotiated resolution of their Protests with Extraction, executed a confidential settlement agreement, and withdrew their Protests with prejudice on behalf of the organizations and on behalf of their respective individual members.

11. On December 11, 2017, the Commission entered Order Nos. 407-2256 and 407-2274, which established the approximate 1,600-acre drilling and spacing unit for the Lowell South Unit. Order Nos. 407-2256 and 407-2274 provide the following: “[a]ny applications for Permits to Drill (Form 2) or Oil and Gas Location Assessments (Form 2A) filed by Extraction Oil & Gas, Inc. in the unit on surface lands within the City and County of Broomfield will comport with the October 24, 2017 Amended and Restated Oil and Gas Operator Agreement between Applicant and the City and County of Broomfield.”

12. On January 16, 2018, Extraction filed with the Commission thirteen Form 2s and a Form 2A for the Lowell South Unit.

13. On June 1, 2018, the Commission approved thirteen Form 2 Applications for Permit-to-Drill the following wells (the “Livingston Wells”):

WELL DESCRIPTION	API NO.
Livingston S19-25-12N	05-014-20750
Livingston S19-25-10N	05-014-20748
Livingston S19-25-11C	05-014-20749
Livingston S19-25-13N	05-014-20752
Livingston S19-25-14C	05-014-20757
Livingston S19-25-2C	05-014-20753
Livingston S19-25-3N	05-014-20758
Livingston S19-25-4N	05-014-20756
Livingston S19-25-5C	05-014-20755
Livingston S19-25-6N	05-014-20747
Livingston S19-25-7N	05-014-20751
Livingston S19-25-8C	05-014-20754
Livingston S19-25-9N	05-014-20746

14. On June 1, 2018, the Commission approved a Form 2A Oil and Gas Location Assessment for the Livingston Pad, Location ID No. 455317 (“Livingston Pad”).

15. On July 6, 2018, WOGC filed a Complaint against the Commission in Denver

District Court in Case No. 2018CV32513 (the “State Court Action”), appealing the Commission’s approval of the Lowell South Unit and the Livingston Form 2A and Form 2s. WOGC’s Complaint alleges, among other things, that the Lowell South Unit and the Livingston Form 2A/Form 2s pose a threat to public health, safety, and welfare and environment.

16. On October 15, 2018, WOGC and ACT filed a protest to Extraction’s pooling application in Docket No. 181000799, which covers the Lowell South Unit.

17. On January 23, 2019, Wildgrass filed a Complaint against the Commission in the United States District Court for the District of Colorado in Case No. 1:19-cv-00190 (the “Federal Court Action”). In this federal case, Wildgrass challenges the constitutionality of the Colorado pooling statute.

18. On February 12, 2019, the presiding judge in the Federal Court Action, the Honorable R. Brooke Jackson, ordered that the Commission hear Extraction’s application in Docket No. 181000799 at the March 11-12, 2019 Commission hearing and hear WOGC’s concerns including whether the application poses a risk to public health, safety, and welfare and environment, just and equitable shares, Extraction’s economic viability, and well economics. Judge Jackson also ordered the Commission to hold a hearing to address “whether or not they reneged on their commitment to honor the City of Broomfield’s agreement.”

19. On February 15, 2019, the Commission issued a notice of hearing in Docket No. 190300337, which stated that the Commission will hold a hearing to determine whether the Form 2s and the Form 2A filed by Extraction for development in the lands covered by Order Nos. 407-2256 and 407-2274 comport with the October 24, 2017 Operator Agreement between Extraction and the City and County of Broomfield (the “Comport Issue”).

20. On February 20, 2019, the Commission held a prehearing conference in this matter, in which Wildgrass, Extraction and the City and County of Broomfield appeared.

21. On February 26, 2019, WOGC and the Commission filed an Expedited Joint Request for Clarification in the Federal Court Action. The Joint Motion states that “[t]he Commission understood the Court’s oral order to require that the Commission hold a hearing regarding the Comport Issue. However, the Comport Issue, and the underlying permits implicated thereby, are the subject of a state court action filed by Wildgrass in July 2018. Furthermore, under Commission Rules a party such as Wildgrass would typically not possess standing at the administrative level to challenge drilling permits.”

22. On February 27, 2019, Judge Jackson issued a minute entry ruling in response to the Joint Motion for Clarification in the Federal Court Action. The minute entry ruling states:

The parties informed the Court that a hearing will be held in early to mid March. The Court hopes that the Commission will elect to consider what you call the ‘Comport’ issue as well as the environmental, health and safety issues concerning the proposed drilling that appear to be the subject of this litigation. In the Court’s view, the Commission should have an opportunity to address all those issues before a federal court determines whether and to what extent it can or should become involved. Ideally, the issues will be resolved in the state system, whether that be the Commission, the state courts, or the legislature.

23. On February 28, 2019, Judge Jackson issued an Order granting the Expedited Request for Clarification:

This Court does not set the agenda for the Commission's hearings. The parties informed the Court that a hearing will be held in early to mid March. The Court hopes that the Commission will elect to consider what you call the "Comport" issue as well as the environmental, health and safety issues concerning the proposed drilling that appear to be the subject of this litigation. In the Court's view, the Commission should have an opportunity to address all those issues before a federal court determines whether and to what extent it can or should become involved. Ideally, the issues will be resolved in the state system, whether that be the Commission, the state courts, or the legislature.

24. On February 28, 2019, the City and County of Broomfield notified the hearing officer that they would not be intervening in the proceeding.

25. On March 1, 2019, in the State Court Action, WOGC filed an opposed Request to Stay Proceedings on the grounds that WOGC believed that Judge Jackson ordered the Commission to review the Livingston Form 2A and Form 2s, the Commission's approval of which WOGC has asked the State court to review.

26. On March 5, 2019, Extraction filed a Combined Response and Rebuttal to WOGC's Prehearing Statement and Witness/Evidentiary Objections. Also on March 5, 2019, WOGC filed witness objections and motions to exclude.

27. At the Final Prehearing Conference held on March 6, 2019, the hearing officer ruled on the parties' evidentiary motions and objections. The Final Prehearing Order, which the hearing officer issued on March 7, 2019, sets forth the results of hearing officer's rulings, the analysis of which was articulated on the record during the Final Prehearing Conference.

28. On Thursday, March 7, 2019, Extraction filed a Motion to Dismiss pursuant to Commission Rule 519 and Rule 12(b)(1) of the Colorado Rules of Civil Procedure. In its Motion to Dismiss, Extraction argues that the Commission should dismiss this proceeding or, in the alternative, that the Commission should bar WOGC from participating in the proceeding because WOGC lacks standing.

29. On March 11, 2019, the Court in the State Court Action denied WOGC's Request to Stay the Proceedings.

HEARING

30. The Commission heard this matter at its March 11-12, 2019 hearing, at which Extraction and Wildgrass were present.

31. At the outset of the hearing, the Commission asked Wildgrass the following three questions: 1) whether it agrees with Extraction's position that this hearing should not occur, 2) if it does not agree, what relief Wildgrass is seeking, and 3) what Wildgrass's position is regarding whether the Commission has jurisdiction to grant Wildgrass's requested relief. In response, Wildgrass stated that it cannot agree with Extraction's position that the matter should be dismissed nor can it say with certainty that Judge Jackson ordered this hearing. Wildgrass wants

to remain neutral and let the Commission interpret Judge Jackson's order. Regarding Wildgrass's requested relief, Wildgrass stated that if the hearing were to proceed, it would seek to have the Commission amend the permits for the Livingstone Wells so that they conform with the October 24, 2017 Operator Agreement. As for the Commission's jurisdiction to grant its requested relief, Wildgrass maintained that it cannot opine on the Commission's jurisdiction.

32. Commissioner Overturf commented that she had never before heard an attorney argue that it was not his or her place to opine on the jurisdiction of a decision-making body, but that she personally did not believe the Commission had jurisdiction. Commissioner Overturf then moved to vacate the hearing.

33. The Commission asked the parties to state their positions on the Commission's motion to vacate the hearing. Extraction and Wildgrass both supported the motion to vacate the hearing.

34. After receiving the parties' positions, the Commission voted unanimously to vacate the hearing.

COMMISSION CONCLUSIONS

35. The Commission does not have jurisdiction to decide the Comport Issue in the context of Docket No. 190300337. Both Wildgrass and Extraction support the Commission vacating Docket No. 190300337.

36. The City and County of Broomfield elected not to intervene in Docket No. 190300337.

ORDER

IT IS HEREBY ORDERED:

1. Docket No. 190300337 is VACATED.

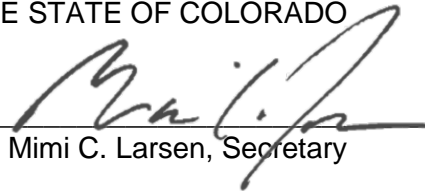
IT IS FURTHER ORDERED:

1. The provisions contained in the above order shall become effective immediately.
2. The Commission expressly reserves its right, after notice and hearing, to alter, amend or repeal any and/or all of the above orders.
3. Under the State Administrative Procedure Act the Commission considers this Order to be final agency action for purposes of judicial review within 35 days after the date this Order is mailed by the Commission.

4. An application for reconsideration by the Commission of this Order is not required prior to the filing for judicial review.

ENTERED this 22nd day of March 2019, as of March 12, 2019.

OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO

By  _____
Mimi C. Larsen, Secretary

CERTIFICATE OF SERVICE

On March 25, 2019, a true and correct copy of the Final Order in Docket No. 190300337 (Order No. 1-236) was sent by electronic mail to the following:

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*Attorneys for Wildgrass Oil and Gas Committee
and Affected Coloradans Together*

 3/27/2019

Michael Eden