

**BEFORE THE OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO**

IN THE MATTER OF THE RULE 303.j
COMPLAINT OF NICKEL ROAD OPERATING
LLC REQUESTING THAT THE DIRECTOR
WITHHOLD APPROVAL OF EXTRACTION OIL
& GAS, INC.'S NINE (9) FORM 2
APPLICATIONS FOR PERMITS TO DRILL
CERTAIN NAMED FALCON WELLS IN
SECTIONS 7 AND 8, TOWNSHIP 7 NORTH,
RANGE 65 WEST, 6TH P.M., AND SECTION 12,
TOWNSHIP 7 NORTH, RANGE 66 WEST, 6TH
P.M., WATTENBERG FIELD, WELD COUNTY,
COLORADO

CAUSE NO. 1

DOCKET NO.

TYPE: GENERAL
ADMINISTRATIVE

**NICKEL ROAD OPERATING LLC'S EXCEPTION TO THE DIRECTOR'S DISMISSAL
OF NICKEL ROAD'S RULE 303.j COMPLAINT PURSUANT TO C.R.S. § 24-4-
105(14)(a)(II), REQUEST FOR IMMEDIATE STAY, AND REQUEST FOR HEARING
BEFORE THE COMMISSION**

COMES NOW Nickel Road Operating LLC ("Nickel Road"), by its attorneys, Jost Energy Law, P.C., and respectfully submits this Exception pursuant to C.R.S. §24-4-105(14)(a)(II) to the email dated May 16, 2018 on behalf of the Director dismissing Nickel Road's Rule 303.j Complaint to Extraction Oil & Gas, Inc.'s ("Extraction") Falcon Form 2's. In support of this Exception, Nickel Road states and alleges as follows.

I. Introduction.

Nickel Road respectfully requests that the Colorado Oil and Gas Conservation Commission ("COGCC" or "Commission") hear and reverse the Director's May 16, 2018 decision unilaterally dismissing Nickel Road's Rule 303.j Complaint. Nickel Road's Rule 303.j Complaint requests that the Director withhold approval of nine (9) Form 2 Applications for Permits to Drill the "Falcon" Wells (the "Falcon APDs") submitted by Extraction, as further defined below. Extraction's Falcon APDs materially impede Nickel Road's coordinated, uniform, efficient and economic development of two proposed 1,280-acre units and one adjacent 640-acre unit for a coordinated 5-Section development plan. Approval of the Falcon APDs will irreparably harm Nickel Road's correlative rights and will create waste in violation of the Oil and Gas Conservation Act (the "Act"). Nickel Road has a legally protected interest under the Act and has demonstrated through its Protest and objections filed of record to Extraction's proposed development of the subject lands that Nickel Road will be directly and adversely aggrieved by the Commission's approval of the Falcon APDs. Nickel Road must be accorded due process with respect to its objections to Extraction's obstructionist development plans which violate the Act. The dismissal of Nickel Road's Rule 303.j Complaint is arbitrary and capricious, a denial of Nickel Road's statutory right to due process, is based upon findings of fact that are clearly

erroneous on the whole record, and is unsupported by substantial evidence when the record is considered as a whole. Under the Administrative Procedures Act, Nickel Road must be afforded the opportunity for the Commission to hear this Exception to the dismissal of its Rule 303.j Complaint for the Falcon APDs based on evidence and testimony presented by Nickel Road in the record and at hearing. For the reasons outlined herein, Nickel Road respectfully requests: (1) that the Hearing Staff forthwith provide a copy of this Exception to the Commissioners; (2) that the Commission issue an immediate stay of approval for the Falcon APDs during the pendency of Nickel Road's Exception; (3) that the Commission notice Nickel Road's Exception for hearing on July 30 – 31, 2018; (4) that, upon hearing, the Commissioners reverse the Director's dismissal of Nickel Road's Rule 303.j Complaint; (5) that, upon reversal of the Director's dismissal of Nickel Road's Rule 303.j Complaint, the Commissioners hear Nickel Road's substantive arguments supporting denial of the Falcon APDs; and (6) for such other findings and orders as the Commission may deem proper or advisable in this matter.

II. Factual Background and Procedural History.

1. There is a substantial factual background and procedural history commencing over seven months ago regarding Nickel Road's proposed development of Sections 7, 8, 9 and 10, Township 7 North, Range 65 West, 6th P.M., and Extraction's attempts to abuse the Commission processes and procedures to obtain priority status for its proposed development which violates the Act by creating waste, harming Nickel Road's correlative rights, and resulting in inefficient and uneconomic development of the subject lands.

2. On or around October 1, 2017, Nickel Road commenced negotiations with the surface owner of a proposed 1,280-acre unit for Sections 9 and 10 Township 7 North, Range 65 West, 6th P.M. (the "Elder Unit") for a surface use agreement governing the location of a multi-well pad on the Elder Unit for the development of up to 24 wells within the unit, and up to 24 wells in the unit adjacent to the east of the Elder Unit, for the production of oil, gas and associated hydrocarbons from the Codell and Niobrara Formations. Nickel Road entered into a Surface Use Agreement to develop the Elder Unit on January 18, 2018.

3. On or around December 15, 2017, Nickel Road commenced negotiations with the surface owner of a proposed 1,280-acre unit for Sections 7 and 8, Township 7 North, Range 65 West, 6th P.M. (the "Fabrizius Unit") for a surface use agreement governing the location of a multi-well pad on the Fabrizius Unit for the development of up to 24 wells for the production of oil, gas and associated hydrocarbons from the Codell and Niobrara Formations. Nickel Road entered into a Surface Use Agreement to develop the Fabrizius Unit on January 12, 2018.

4. On or around February 2, 2018, Extraction filed an application with the COGCC in Docket No. 180400279 for an order to, among other things, establish an approximate 1,920-acre drilling and spacing unit for the below-described lands, which overlap Nickel Road's proposed Elder Unit and Fabrizius Unit, and to authorize the drilling

of up to 20 approximate 3-mile horizontal wells within the proposed unit for the production of oil, gas and associated hydrocarbons from the Codell-Niobrara Formation, with the treated intervals of the wellbore of any permitted wells to be located not less than 460 feet from the unit boundaries, and not less than 150 feet from the treated interval of any well being drilled or producing from the Codell-Niobrara Formation, and authorizing up to six multi-well pads within the proposed unit or adjacent thereto, unless an exception is granted by the Director on the below-described lands (the "Extraction Application Lands"):

Township 7 North, Range 65 West, 6th P.M.

Section 8: E½

Section 9: All

Section 10: All

Section 11: W½

1,920-acres, more or less, Weld County, Colorado.

5. On or around February 16, 2018, Extraction submitted 9 "Dime" APDs and an associated Form 2A within its proposed unit pending in Docket No. 180400279. Nickel Road has since submitted written objections to Extractions Dime APDs and Dime Pad on the COGCC website, filed a Protest to Extraction's Application in Docket No. 180400279, filed a Rule 303.j Complaint against Extraction's Dime APDs and Dime Pad based on Extraction's violations of the Act, and filed an Exception to the Director's unilateral dismissal of Nickel Road's Rule 303.j Complaint.

6. On February 21, 2018, Nickel Road filed 24 Form 2 Applications for Permits to Drill the following "Elder West Wells" on the proposed Elder Unit, with surface locations in the NW/4 SW/4 of Section 11, Township 7 North, Range 65 West, 6th P.M and bottomhole locations in the W/2 W/2 of Section 9, Township 7 North, Range 65 West, 6th P.M.:

Document No.	Well Name	Objective Formation
401548420	ELDER 1X-HNB-09-07-65	NIOBRARA
401548424	ELDER 2X-HNB-09-07-65	NIOBRARA
401548428	ELDER 3X-HNB-09-07-65	NIOBRARA
401548432	ELDER 4X-HNB-09-07-65	NIOBRARA
401548435	ELDER 5X-HNB-09-07-65	NIOBRARA
401548439	ELDER 6X-HNB-09-07-65	NIOBRARA
401548442	ELDER 7X-HNB-09-07-65	NIOBRARA
401548450	ELDER 8X-HNB-09-07-65	NIOBRARA
401548423	ELDER 1X-HNC-09-07-65	NIOBRARA
401548426	ELDER 2X-HNC-09-07-65	NIOBRARA
401548431	ELDER 3X-HNC-09-07-65	NIOBRARA
401548434	ELDER 4X-HNC-09-07-65	NIOBRARA
401548437	ELDER 5X-HNC-09-07-65	NIOBRARA
401548441	ELDER 6X-HNC-09-07-65	NIOBRARA

401548449	ELDER 7X-HNC-09-07-65	NIOBRARA
401548452	ELDER 8X-HNC-09-07-65	NIOBRARA
401548422	ELDER 1X-HC-09-07-65	CODELL
401548425	ELDER 2X-HC-09-07-65	CODELL
401548430	ELDER 3X-HC-09-07-65	CODELL
401548433	ELDER 4X-HC-09-07-65	CODELL
401548436	ELDER 5X-HC-09-07-65	CODELL
401548440	ELDER 6X-HC-09-07-65	CODELL
401548444	ELDER 7X-HC-09-07-65	CODELL
401548451	ELDER 8X-HC-09-07-65	CODELL

7. On February 21, 2018, Nickel Road filed a Form 2A Oil and Gas Location Assessment for the proposed Elder Unit for a multi-well pad located in the NW/4 SW/4 of Section 11, Township 7 North, Range 65 West, 6th P.M., Document No. 401548407 (the "Elder Pad") pursuant to a validly executed Surface Use Agreement.

8. On February 27, 2018, Nickel Road filed an application with the COGCC in Docket No. 180400308 for an order to, among other things: 1) vacate the 320-acre drilling and spacing unit established by Order No. 407-1000 for the N½ of Section 8, Township 7 North, Range 65 West, 6th P.M. for the production of oil, gas and associated hydrocarbons from the Codell and Niobrara Formations; 2) vacate the 1,280-acre drilling and spacing unit established by Order No. 407-1781 for Section 12, Township 7 North, Range 66 West, 6th P.M. and Section 7, Township 7 North, Range 65 West, 6th P.M.; 3) establish an approximate 1,280-acre drilling and spacing unit for the Fabrizius Unit (Sections 7 and 8, Township 7 North, Range 65 West) for the production of oil, gas and associated hydrocarbons from the Codell and Niobrara Formations; 4) approve up to 24 new horizontal wells in the proposed approximate 1,280-acre drilling and spacing unit for the efficient and economic development of oil, gas, and associated hydrocarbons from the Codell and Niobrara Formations underlying the Application Lands; 5) providing that the treated interval of each proposed horizontal well shall be no closer than 460 feet from the boundaries of the proposed unit, and all horizontal wells shall be no closer than 150 feet from the treated interval of another well producing from the same supply within the unit, unless a waiver or consent is obtained from the operator of such well; and 6) providing that no more than two new well pads be authorized in the unit, or adjacent thereto, unless an exception is granted by the Director.

9. On February 27, 2018, Nickel Road filed an application with the COGCC in Docket No. 180400309 for an order to, among other things: 1) establish an approximate 1,280-acre drilling and spacing unit for the Elder Unit (Sections 9 and 10, Township 7 North, Range 65 West) for the production of oil, gas and associated hydrocarbons from the Codell and Niobrara Formations; 2) and approve up to 24 new horizontal wells in the proposed approximate 1,280-acre drilling and spacing unit for the efficient and economic development of oil, gas, and associated hydrocarbons from the Codell and Niobrara Formations underlying the Application Lands; 3) providing that the treated interval of each proposed horizontal well shall be no closer than 460 feet from the boundaries of the proposed unit, and all horizontal wells shall be no closer than 150 feet from the treated

interval of another well producing from the same supply within the unit, unless a waiver or consent is obtained from the operator of such well; and 4) providing that no more than two new well pads be authorized in the unit, or adjacent thereto, unless an exception is granted by the Director.

10. On March 1, 2018, Nickel Road filed 24 Form 2 Applications for Permits to Drill the following "Fabrizius Wells" on the Fabrizius Unit, with surface locations in the NE/4 SE/4 of Section 8, Township 7 North, Range 65 West, 6th P.M and bottomhole locations in the W/2 W/2 of Section 7, Township 7 North, Range 65 West, 6th P.M.:

Document No.	Well Name	Objective Formation
401560159	FABRIZIUS 1X-HNB-07-07-65	NIOBRARA
401560210	FABRIZIUS 2X-HNB-07-07-65	NIOBRARA
401560468	FABRIZIUS 3X-HNB-07-07-65	NIOBRARA
401560506	FABRIZIUS 4X-HNB-07-07-65	NIOBRARA
401560619	FABRIZIUS 5X-HNB-07-07-65	NIOBRARA
401560641	FABRIZIUS 6X-HNB-07-07-65	NIOBRARA
401560665	FABRIZIUS 7X-HNB-07-07-65	NIOBRARA
401560678	FABRIZIUS 8X-HNB-07-07-65	NIOBRARA
401560185	FABRIZIUS 1X-HNC-07-07-65	NIOBRARA
401560288	FABRIZIUS 2X-HNC-07-07-65	NIOBRARA
401560491	FABRIZIUS 3X-HNC-07-07-65	NIOBRARA
401560521	FABRIZIUS 4X-HNC-07-07-65	NIOBRARA
401560613	FABRIZIUS 5X-HNC-07-07-65	NIOBRARA
401560635	FABRIZIUS 6X-HNC-07-07-65	NIOBRARA
401560663	FABRIZIUS 7X-HNC-07-07-65	NIOBRARA
401560674	FABRIZIUS 8X-HNC-07-07-65	NIOBRARA
401559974	FABRIZIUS 1X-HC-07-07-65	CODELL
401560453	FABRIZIUS 2X-HC-07-07-65	CODELL
401560500	FABRIZIUS 3X-HC-07-07-65	CODELL
401560556	FABRIZIUS 4X-HC-07-07-65	CODELL
401560574	FABRIZIUS 5X-HC-07-07-65	CODELL
401560628	FABRIZIUS 6X-HC-07-07-65	CODELL
401560651	FABRIZIUS 7X-HC-07-07-65	CODELL
401560669	FABRIZIUS 8X-HC-07-07-65	CODELL

11. On March 1, 2018, Nickel Road filed a Form 2A Oil and Gas Location Assessment for the Fabrizius Unit for a multi-well pad located in the NE/4 SE/4 of Section 8, Township 7 North, Range 65 West, 6th P.M., Document No. 401559969 (the "Fabrizius Pad") pursuant to a validly executed Surface Use Agreement.

12. On March 1, 2018, amended May 11, 2018, Nickel Road filed an Application with the COGCC in Docket No. 180400343 for an order to, among other things, 1) establish an approximate 640-acre drilling and spacing unit for Section 11, Township 7

North, Range 65 West, for the production of oil, gas and associated hydrocarbons from the Codell and Niobrara Formations; 2) approve up to 24 new horizontal wells in the proposed approximate 640-acre drilling and spacing unit for the efficient and economic development of oil, gas, and associated hydrocarbons from the Codell and Niobrara Formations underlying the Application Lands; 3) providing that the treated interval of each proposed horizontal well shall be no closer than 460 feet from the boundaries of the proposed unit, and all horizontal wells shall be no closer than 150 feet from the treated interval of another well producing from the same supply within the unit, unless a waiver or consent is obtained from the operator of such well; and 4) providing that no more than two new well pads be authorized in the unit, or adjacent thereto, unless an exception is granted by the Director. Nickel Road's Application in Docket No. 180400343 was amended from a proposed 1,280-acre unit to a proposed 640-acre unit to exclude Section 12, Township 7 North, Range 65 West, in a negotiated settlement with the adjacent operator proposing development of Section 12, Township 7 North, Range 65 West, 6th P.M. and Section 7, Township 64 West, 6th P.M. in Docket No. 180400285.

13. On March 16, 2018, Nickel Road filed a Protest to Extraction's Application in Docket No. 180400279 on the basis, among other things, that Extraction's proposed development of the Extraction Application Lands will create waste, will harm Nickel Road's correlative rights, and will not result in the efficient and economic development of the subject lands in violation of the Act.

14. On March 16, 2018, Nickel Road, as an "Owner" with a legally protected interest under the Act, filed a Rule 303.j Complaint and associated Exhibits requesting that the Director withhold approval of the Dime APDs and Dime Pad because the Dime APDs and Dime Pad violate the Act based on information supplied in the Complaint.

15. On April 13, 2018, Extraction submitted the following Falcon APDs:

Document No.	Well Name	Objective Formation
401592947	Falcon 8W-25-11N	NIOBRARA
401592946	Falcon 8W-25-10C	CODELL
401592945	Falcon 8W-25-9N	NIOBRARA
401592944	Falcon 8W-25-8N	NIOBRARA
401592943	Falcon 8W-25-7C	CODELL
401592942	Falcon 8W-25-6N	NIOBRARA
401592940	Falcon 8W-25-5N	NIOBRARA
401592939	Falcon 8W-25-4C	CODELL
401592938	Falcon 8W-25-3N	NIOBRARA

16. Based on the records of Nickel Road and the COGCC, no Form 2A Oil and Gas Location Assessment has been submitted by Extraction for the proposed Falcon APDs, nor has a corresponding drilling and spacing unit application been filed by Extraction for development of the Falcon APDs.

17. The Falcon APDs posted to the COGCC website on or around May 1, 2018, and are currently “in process” with the Commission. Nickel Road has submitted comments objecting to the Falcon APDs on the COGCC website.

18. The Falcon APDs were filed over one month after Nickel Road filed its 24 Fabrizio APDs on the Fabrizio Unit, and nearly two months after Nickel Road filed its 24 Elder APDs on the Elder Unit. Extraction’s Falcon APDs directly overlap Nickel Road’s Fabrizio APDs and a portion of Nickel Road’s Elder APDs. See Exhibit 2 and Exhibit 3 attached to Nickel Road’s Rule 303.j Complaint. Nickel Road’s first-filed Fabrizio APDs and Elder APDs have priority over Extraction’s Falcon APDs for the development of Sections 7, 8, 9 and 10, Township 7 North, Range 65 West.

19. On May 11, 2018, Nickel Road, as an “Owner” with a legally protected interest under the Act, filed the subject Rule 303.j Complaint and associated Exhibits requesting that the Director withhold approval of the Falcon APDs because the Falcon APDs violate the Act based on information supplied in the Complaint.

20. On May 16, 2018, Jane Stanczyk, Permit and Technical Services Manager for the COGCC, sent the following email to counsel for Nickel Road and representatives of Extraction:

“All

Director Murphy and I have reviewed Nickel Road's Rule 303.j complaint regarding Extraction's Falcon APDs.

Nickel Road's Fabrizio and Elder APDs conflict with Extraction's pending Dime APDs and, therefore, will not be reviewed for completeness and passed into In Process.

None of the Dime, Fabrizio and Elder Form 2As and APDs can be approved until the Commission has acted upon the conflicting spacing orders 180400279, 180400308, and 1890400309.

The Nickel Road complaint is dismissed.

Sincerely,

Jane Stanczyk
Permit and Technical Services Manager.”

See Exhibit 1 attached and made a part hereto.

21. The Director’s dismissal of Nickel Road’s Rule 303.j Complaint did not include any reference to a record of decision, or a detailed basis of the denial of Nickel

Road's Complaint. Nickel Road must be accorded due process with respect to its objections to Extraction's Falcon APDs.

III. Legal Standard of Review and Legal Argument.

1. COGCC Rule 303.j.(1) provides that the Director may withhold approval of any Application for Permit-to-Drill, Form 2, or Oil and Gas Location Assessment, Form 2A, for any proposed well or Oil and Gas Location when, based on information supplied in a written complaint submitted by any party with standing under Rule 522.a.(1), the Director has reasonable cause to believe the proposed well or Oil and Gas Location is in material violation of the Commission's rules, regulations, orders or statutes, or otherwise presents an imminent threat to public health, safety and welfare, including the environment, or a material threat to wildlife resources. Any such withholding of approval shall be limited to the minimum period of time necessary to investigate and dismiss the complaint, or to resolve the alleged violation or issue.

2. COGCC Rule 303.j.(1) further provides that if the complaint is dismissed or the matter resolved to the dissatisfaction of the complainant, such person may consult with the parties identified in Rule 503.b.(7).

3. The parties identified in Rule 503.b.(7) include the operator, the surface owner, and the local government. Nickel Road is unable to resolve its objections to Extraction's Falcon APDs with Extraction.

4. The Administrative Procedure Act, C.R.S. § 24-4-101 et. al., assures that all parties to an agency adjudicatory proceeding are accorded due process of law. See C.R.S. § 24-4-105(1).

5. C.R.S. § 24-4-105(14)(a)(II) provides that an initial decision regarding agency action may be appealed to the Commission by filing an exception within thirty (30) days after service of the initial decision upon the parties. C.R.S. §24-4-105(14)(a)(II)(2018).

6. C.R.S. § 24-4-105(15)(a) provides, in relevant part, that that any party who seeks to reverse or modify an initial decision shall file with the agency, within twenty (20) days following such decision, a designation of the relevant parts of the record described in subsection (14) of this section. The grounds of the decision shall be within the scope of the issues presented on the record. The record shall include all matters constituting the record upon which the decision was based, the rulings upon the proposed findings and conclusions, the initial decision, and any other exceptions and briefs filed. §24-4-105(15)(a) (2018).

7. While typically applied in the context of a judicial review of an agency action in the applicable district court, C.R.S. §24-4-106(7) provides guidance to this Commission as to the basis for determining that an agency's decision should be reversed and Nickel Road's Rule 303.j Complaint should be allowed to proceed to a Commission hearing.

C.R.S. §24-4-106(7) provides, in part, that if a court finds that the agency action is arbitrary or capricious, a denial of statutory right, contrary to constitutional right, power, privilege, or immunity, in excess of statutory jurisdiction, authority, purposes, or limitations, not in accord with the procedures or procedural limitations of this article or as otherwise required by law, an abuse or clearly unwarranted exercise of discretion, based upon findings of fact that are clearly erroneous on the whole record, unsupported by substantial evidence when the record is considered as a whole, or otherwise contrary to law, then the court shall hold unlawful and set aside the agency action and shall restrain the enforcement of the order or rule under review, compel any agency action to be taken which has been unlawfully withheld or unduly delayed, remand the case for further proceedings, and afford such other relief as may be appropriate. C.R.S. § 24-4-106(7).

8. In this instance, the email from Ms. Stanczyk relaying the Director's dismissal of the Rule 303.j Complaint provides no basis for the unilateral dismissal of Nickel Road's Complaint. There are no findings of fact or conclusions of law upon which Nickel Road has to rely on as part of this Exception pleading. As such, Nickel Road maintains that the May 9, 2018 email dismissing Nickel Road's Rule 303.j Complaint is arbitrary and capricious, a denial of Nickel Road's due process and its statutory right to have the Commission address the irreparable harm to its real property leasehold interests, is in excess of the Commission's authority under the Act, is unsupported by substantial evidence when the record is considered as a whole and is otherwise contrary to law.

9. In addition to the reasons set forth above, it is important for the Commission to fully understand the effects of the dismissal of Nickel Road's Rule 303.j Complaint and, further, the effects of the ultimate approval of Extraction's Falcon APDs on Nickel Road's interests and development of the subject lands.

a. Nickel Road is an "Owner" in the Fabrizio Unit and the Elder Unit, which include the lands in which the Falcon APDs are located. Nickel Road has filed 24 Fabrizio APDs and associated Form 2A, and 24 Elder West APDs and associated Form 2A to develop the proposed unit, and has interests subject to legal protection under the Oil and Gas Conservation Act, §34-60-101 et seq. (the "Act"). Nickel Road will be adversely affected and aggrieved should the Commission approve the Falcon APDs.

b. Extraction's Falcon APDs are in material violation of the Act because they will result in economic waste, inefficient and uneconomic development, and will harm Nickel Road's correlative rights. If the Falcon APDs are approved, Nickel Road will be immediately adversely affected and aggrieved as it will be prohibited from developing its first-filed Fabrizio and Elder West APDs to develop the Fabrizio Unit and Elder Unit in a cohesive, uniform, efficient and economic manner to prevent waste.

c. Extraction's Falcon APDs are invalid as they contain an express misrepresentation regarding a corresponding drilling and spacing unit application.

Within the "Spacing and Unit Information" section of each of Extraction's Falcon APDs, Extraction misrepresents the following:

"A spacing order has been submitted for the following unit. A docket # will be provided on the priority list per guidance from COGCC. Unit Configuration = T7N-R65W Sec 8: W/2, Sec 7: All, T7N-R66W Sec 12: All"

Nickel Road owns leasehold interest within Sections 7 and 8, Township 7 North, Range 65 West, and has not received notice of a drilling and spacing unit filed by Extraction for these lands. If any such Application has been filed by Extraction, it does not comply with COGCC Rules or the Act as Nickel Road, as an "Owner" in the proposed unit, has not received notice of the Application.

d. Nickel Road's first-filed Fabrizius and Elder APDs take priority over Extraction's Falcon APDs, and therefore the Director should withhold approval of Extraction's Falcon APDs pursuant to Rule 303.j until Nickel Road's Protest to Extraction's Application in Docket No. 180400279 has been heard by the Commission.

e. Extraction is abusing the Commission's processes and procedures in violation of the Act and COGCC Rules by knowingly filing the Falcon APDs overlapping Nickel Road's first-filed Fabrizius APDs and Elder APDs with direct knowledge that Nickel Road's Fabrizius and Elder APDs are subject to pending objections within Extraction's adjacent development pending in Docket No. 180400279, which has been protested by Nickel Road.

f. Nickel Road has pursued substantial development plans to drill, complete and operate up to 72 horizontal wells within two 1,280-acre and one 640-acre drilling and spacing units pending for the Fabrizius Unit and the Elder Unit. Nickel Road has undertaken substantial leasing efforts in the area, negotiated surface use agreements for multi-well pads to develop the proposed units, and conducted subsurface geologic and engineering evaluations to determine the most efficient and economical paths of development. Nickel Road's intended development plan through two 1,280-acre and one 640-acre drilling and spacing units provides for efficient and economic development of the underlying hydrocarbon resource, minimizes surface impacts, serves to prevent waste and to protect correlative rights in accordance with the Act.

g. Based on the records of the COGCC, Extraction has not filed a corresponding Form 2A for a surface location to develop the proposed Falcon APDs, and has not evidenced an intent to develop the proposed Falcon APDs. Upon information and belief, Extraction has no immediate or future plans to develop this acreage.

h. Nickel Road secured surface use agreements in good faith to develop the Fabrizius Unit and the Elder Unit in January 2018, prior to Extraction filing the

subject Falcon APDs and the adjacent Dime APDs and Dime Form 2A. Extraction does not have a surface use agreement to develop its adjacent Dime APDs in the unit pending in Docket No. 180400279, however is still attempting to block Nickel Road's development of the Fabrizio and Elder Units through the submittal of the Falcon APDs and adjacent Dime APDs.

i. Should Extraction's Falcon APDs be approved, economic "waste" as defined by the Act will result, inefficient and uneconomic development of the underlying hydrocarbons will result, and Nickel Road's correlative rights will be harmed. Approval of Extraction's Falcon APDs will prohibit Nickel Road from the efficient, economic and cohesive planned development of the entirety of the Fabrizio Unit and the Elder Unit and adjacent lands through 1,280-acre units. Nickel Road's large-scale development plan will serve to greater ensure that the mandates of the Act are carried out.

10. The unilateral dismissal of Nickel Road's Rule 303.j Complaint has afforded no legal relief to Nickel Road to take its objections and Extraction's violations of the Act in front of the Commission. Nickel Road is an Owner with a legally protected interest in Sections 7, 8, 9, 10 and 11, Township 7 North, Range 65 West, and Nickel Road is entitled to hearing before the Commission to determine whether the Falcon APDs may be approved or denied. For these reasons, a hearing on the dismissal of Nickel Road's Rule 303.j Complaint is warranted under the Administrative Procedures Act.

11. Based on Nickel Road's assertions and evidence that it has introduced of record in this matter, approval of Extraction's Falcon APDs will irreparably harm Nickel Road's correlative rights, create waste, and will substantially affect and aggrieve Nickel Road and the mineral interest owners in Sections 7, 8, 9, 10 and 11, Township 7 North, Range 65 West. Nickel Road has a protected interest as an Owner under the Act and therefore has the right to seek relief under Rule 303.j, the Administrative Procedures Act, and the Oil and Gas Conservation Act.

12. The agency action dismissing Nickel Road's Rule 303.j Complaint is arbitrary or capricious, a denial of Nickel Road's statutory right to due process, is based upon findings of fact that are clearly erroneous on the whole record, and is unsupported by substantial evidence when the record is considered as a whole. As such, the Commission must set aside the agency action and afford Nickel Road a hearing before the Commission on its request to withhold approval of Extraction's Falcon APDs.

13. Nickel Road respectfully requests that the Commission issue an immediate stay of approval for Extraction's Falcon APDs and any subsequently filed Form 2A for development of the Falcon APDs until Nickel Road's Exception is heard and determined by the Commission.

14. Nickel Road expressly reserves its right to amend, delete, or supplement the discussion of the issues herein.

15. Concurrent with the filing of this Exception, Nickel Road has filed a Designation of Record pursuant to C.R.S. § 24-4-105(15)(a).

WHEREFORE, for the reasons outlined herein, Nickel Road respectfully requests the following relief:

A. That the Hearing Staff forthwith provide a copy of this Exception to the Commissioners.

B. That the Commission issue an immediate stay of approval for the Falcon APDs and any subsequently filed Form 2A for development of the Falcon APDs during the pendency of Nickel Road's Exception.

C. That the Commission notice Nickel Road's Exception for hearing on July 30 – 31, 2018.

D. That, upon hearing, the Commissioners reverse the Director's dismissal of Nickel Road's Rule 303.j Complaint.

E. That, upon reversal of the Director's dismissal of Nickel Road's Rule 303.j Complaint, the Commissioners hear Nickel Road's substantive arguments regarding denial of the Falcon APDs.

F. For such other findings and orders as the Commission may deem proper or advisable in this matter.

Dated: May 29, 2018.

Respectfully submitted:

NICKEL ROAD OPERATING LLC

By: 

Jamie L. Jost
Kelsey H. Wasylenky
Jost Energy Law, P.C.
Attorneys for Nickel Road
1401 17th Street, Suite 370
Denver, Colorado 80202
(720) 446-5620
jjost@jostenergylaw.com
kwasylenky@jostenergylaw.com

Nickel Road's Address:

Nickel Road Operating LLC
ATTN: Andrew Haney
999 18th St Suite 3370
Denver, Co 80202

CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2018, I caused a copy of Nickel Road Operating LLC's Exception to the Director's Dismissal of Rule 303.j Complaint pursuant to C.R.S. § 24-4-105(14)(a)(II) to be served via electronic mail to the Colorado Oil and Gas Conservation Commission pursuant to C.R.S. § 24-4-105(14)(a)(II), and via courier/U.S. mail at the addresses listed below.

Via electronic mail and courier:

Colorado Oil and Gas Conservation Commission

ATTN: Julie Murphy, Julie Prine, James Rouse, and Margaret Humecki

1120 Lincoln Street, Suite 801

Denver, CO 80203

Julie.Murphy@state.co.us

James.Rouse@state.co.us

Julie.Prine@state.co.us

Margaret.humecki@state.co.us

Courtesy Copy Via Email and U.S. mail:

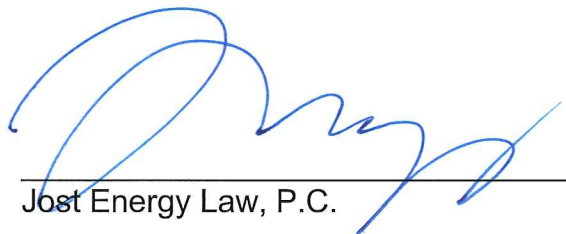
Robert A. Willis

The Shanor Group LLC

600 Seventeenth Street, Suite 2800

Denver, CO 80202

rwillis@shanorgroup.com



Jost Energy Law, P.C.

Subject: Re: Nickel Road Rule 303j Complaint - Extraction Falcon Wells

Date: Wednesday, May 16, 2018 at 2:17:32 PM Mountain Daylight Time

From: Stanczyk - DNR, Jane

To: Kelsey Wasylenky

CC: Kerry LeBleu, julie.murphy@state.co.us, avistica@ExtractionOG.com, dnr_cogcc.complaints@state.co.us, Julie Prine, Westerdale - DNR, Barbara, Jamie Jost, Jill Dorancy, Sydney Nelson, Emily Medley, Blane Thingelstad, Bonnie Lamond, Jeff Annable, Penny Garrison

All

It is not necessary to place these 9 APDs on hold.

The Falcon APDs cannot be approved without a spacing unit.

The Falcon APDs cannot be approved without a Form 2A.

When Extraction submits the Form 2A, and it passes completeness, it will be placed on hold.

Jane

Jane Stanczyk
Permit and Technical Services Manager



P 303.894.2100 x5119 | F 303.894.2109

1120 Lincoln Street, Suite 801, Denver, CO 80203

jane.stanczyk@state.co.us | www.colorado.gov/cogcc

On Wed, May 16, 2018 at 2:11 PM, Kelsey Wasylenky <kwasylenky@jostenergylaw.com> wrote:

Thank you, Ms. Stanczyk.

Could you please confirm that the Falcon APDs will also be placed on hold until the Commission has acted on the conflicting spacing orders in Dockets 180400279, 180400308 and 180400309?

Thank you.

Kelsey

Kelsey H. Wasylenky

Jost Energy Law, P.C.

Shareholder

(720) 446-5620

kwasylenky@jostenergylaw.com

From: "Stanczyk - DNR, Jane" <jane.stanczyk@state.co.us>

Date: Wednesday, May 16, 2018 at 2:03 PM

To: Kerry LeBleu <kblebleu@jostenergylaw.com>

Cc: "julie.murphy@state.co.us" <julie.murphy@state.co.us>, "avistica@ExtractionOG.com" <avistica@extractionog.com>, "dnr_cogcc.complaints@state.co.us" <dnr_cogcc.complaints@state.co.us>, "julie.prine@state.co.us" <julie.prine@state.co.us>, "Westerdale - DNR, Barbara" <barbara.westerdale@state.co.us>, Jamie Jost <jjost@jostenergylaw.com>, Kelsey Wasylenky <kwasylenky@jostenergylaw.com>, Jill Dorancy <jdorancy@jostenergylaw.com>, Sydney Nelson <snelson@jostenergylaw.com>, Emily Medley <emedley@jostenergylaw.com>, Blane Thingelstad <BThingelstad@extractionog.com>, Bonnie Lamond <blamond@extractionog.com>, Jeff Annable <jannable@extractionog.com>

Subject: Re: Nickel Road Rule 303j Complaint - Extraction Falcon Wells

All

Director Murphy and I have reviewed Nickel Road's Rule 303.j complaint regarding Extraction's Falcon APDs.

Nickel Road's Fabrizious and Elder APDs conflict with Extraction's pending Dime APDs and, therefore, will not be reviewed for completeness and passed into In Process.

None of the Dime, Fabrizious and Elder Form 2As and APDs can be approved until the Commission has acted upon the conflicting spacing orders 180400279, 180400308, and 1890400309.

The Nickel Road complaint is dismissed.

Sincerely,

Jane Stanczyk
Permit and Technical Services Manager



P 303.894.2100 x5119 | F 303.894.2109
[1120 Lincoln Street, Suite 801, Denver, CO 80203](https://www.colorado.gov/cogcc)
jane.stanczyk@state.co.us | www.colorado.gov/cogcc

On Fri, May 11, 2018 at 3:31 PM, Kerry LeBleu <kblebleu@jostenergylaw.com> wrote:

Good afternoon,

Attached in the referenced matter is Nickel Road Operating, LLC's Rule 303.j. Complaint and Request that the Director Withhold Approval of Extraction Oil & Gas Inc.'s Form 2 Applications for Permits to Drill. The original is being sent to you via courier. If there are any questions, you may contact Jamie Jost at 720.446.5620.

Thank you,

id:image001.png@01D3A575.7C9F55D0

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