

Fill in this information to identify the case:

Debtor Extraction Oil & Gas, Inc.

United States Bankruptcy Court for the: _____ District of Delaware
(State)

Case number 20-11548

**Official Form 410
Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>ANDI SETIYADI AND KLARISSA MARIA</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent?	Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<u>ANDI SETIYADI AND KLARISSA MARIA</u> <u>14792 EAGLE RIVER LOOP</u> <u>BROOMFIELD, CO 80023</u>	
	Contact phone _____	Contact phone _____
	Contact email <u>asetiyadi@gmail.com</u>	Contact email _____
	Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	



Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$ 1,500 - 10,000. Does this amount include interest or other charges?
 No
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.
Royalty from Oil and Gas productions.

9. Is all or part of the claim secured? No
 Yes. The claim is secured by a lien on property.
Nature or property:
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
 Motor vehicle
 Other. Describe: Oil and gas, and the proceed from sale.
Basis for perfection: Forced Pooling Order
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ 1,500 - 10,000
Amount of the claim that is secured: \$ 1,500 - 10,000
Amount of the claim that is unsecured: \$ 0 (The sum of the secured and unsecured amount should match the amount in line 7.)
Amount necessary to cure any default as of the date of the petition: \$ 0
Annual Interest Rate (when case was filed) 8 %
 Fixed
 Variable

10. Is this claim based on a lease? No
 Yes. Amount necessary to cure any default as of the date of the petition. \$ N/A

11. Is this claim subject to a right of setoff? No
 Yes. Identify the property: _____



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.	\$ _____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ _____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 08/14/2020
MM / DD / YYYY

/s/Andi Setiyadi
Signature

Print the name of the person who is completing and signing this claim:

Name Andi Setiyadi
First name Middle name Last name

Title _____

Company _____
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____

Contact phone _____ Email _____



KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (866) 571-1791 | International (781) 575-2049

Debtor: 20-11548 - Extraction Oil & Gas, Inc.		
District: District of Delaware		
Creditor: ANDI SETIYADI AND KLARISSA MARIA 14792 EAGLE RIVER LOOP BROOMFIELD, CO, 80023 Phone: Phone 2: Fax: Email: asetiyadi@gmail.com	Has Supporting Documentation: Yes, supporting documentation successfully uploaded	
	Related Document Statement:	
	Has Related Claim: No	
	Related Claim Filed By:	
		Filing Party: Creditor
Other Names Used with Debtor:	Amends Claim: No	
	Acquired Claim: No	
Basis of Claim: Royalty from Oil and Gas productions.	Last 4 Digits: No	Uniform Claim Identifier:
Total Amount of Claim: 1,500 - 10,000	Includes Interest or Charges: No	
Has Priority Claim: No	Priority Under:	
Has Secured Claim: Yes: 1,500 - 10,000	Nature of Secured Amount: Other	
Amount of 503(b)(9): No	Describe: Oil and gas, and the proceed from sale.	
Based on Lease: Yes, N/A	Value of Property: 1,500 - 10,000	
Subject to Right of Setoff: No	Annual Interest Rate: 8%, Fixed	
	Arrearage Amount: 0	
	Basis for Perfection: Forced Pooling Order	
	Amount Unsecured: 0	
Submitted By: Andi Setiyadi on 14-Aug-2020 4:08:12 p.m. Eastern Time		
Title:		
Company:		

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

IN THE MATTER OF THE PROMULGATION AND) CAUSE NO. 407
ESTABLISHMENT OF FIELD RULES TO GOVERN)
OPERATIONS FOR THE NIOBRARA AND CODELL) DOCKET NO. 181000799
FORMATIONS, WATTENBERG FIELD, BROOMFIELD)
COUNTY, COLORADO) TYPE: POOLING
)
) ORDER NO. 407-2771

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, upon application for an order pooling all interests in an approximate 1,600-acre drilling and spacing unit established by Order Nos. 407-2256 and 407-2274 covering Sections 18 and 19 and portions of Section 7, Township 1 South, Range 68 West, 6th P.M., for the development and operation of the Niobrara and Codell Formations.

The Commission finds as follows:

1. Extraction Oil and Gas, Inc., Operator No. 10459 (“Extraction” or “Applicant”), as applicant herein, is an interested party in the subject matter of the above referenced hearing.
2. Wildgrass Oil and Gas Committee (“Wildgrass” or “WOGC”) and Affected Coloradans Together (“ACT”), as protestants, are interested parties 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.
4. The Commission has jurisdiction over the subject matter embraced in said matter and the parties interested therein, and has authority to promulgate the hereinafter prescribed order pursuant to the Oil and Gas Conservation Act (the “Act”).

PROCEDURAL HISTORY

5. 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 (“Application Lands” or “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

6. On December 11, 2017, the Commission entered Order Nos. 407-2256 and 407-2274, which approved Extraction’s applications in Docket Nos. 170900598 and 171000749, and

established an approximate 1,600-acre drilling and spacing unit for the Application Lands.

7. 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

8. 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”).

9. On August 30, 2018, Extraction filed its application in Docket No. 181000799 (the “Application”) to pool all interests in the Application Lands for the development and operation of the Niobrara and Codell Formations, to obtain cost-recovery against the nonconsenting owners in the Livingston Wells, and have the order be made effective as of the date of the application, or the date that the costs specified in Section 34-60-116(7)(b)(II), C.R.S., are first incurred for the drilling of the Livingston Wells.

10. On October 15, 2018, WOGC and ACT filed their protest to the Application.

11. On October 15, 2018, Mr. Brian and Ms. Tiffany Kilcoyne filed a protest to the Application.

12. On October 15, 2018, Adams 12 Five Star Schools filed a protest to the Application.

13. On October 15, 2018, pursuant to Extraction’s unopposed request, the hearing officer continued the Application to the December 11-12, 2018 hearing.

14. On December 11, 2018, pursuant to Extraction’s unopposed request, the hearing officer continued the Application to the January 28-29, 2019 hearing.

15. On January 18, 2019, pursuant to Extraction’s unopposed request, the hearing officer continued the Application to the March 11-12, 2019 hearing.

16. 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.

17. On February 6, 2019, Adams 12 Five Star Schools withdrew its protest to the Application.

18. On February 12, 2019, the presiding judge in the Federal Court Action, the Honorable R. Brooke Jackson, ordered that Extraction's pooling Application be heard at the March 11-12, 2019 hearing. Judge Jackson further ordered that the Commission hear issues relating to public health, safety, welfare and the environment, economics, and whether Extraction's proposed development will result in just and equitable shares to all owners.

19. On February 14, 2019, the hearing officer convened the initial prehearing conference, at which representatives for Extraction, WOGC and ACT, and Mr. Brian and Ms. Tiffany Kilcoyne appeared. The Hearing Officer instructed the parties that the case would proceed to the March 11-12 hearing pursuant to Judge Jackson's February 12 order.

20. On February 14, 2019, the hearing officer issued the case management order, which permitted WOGC and ACT to serve 20 interrogatories, 20 requests for production, and 20 requests for admission. The case management order is attached as Exhibit A.

21. On February 19, 2019, Extraction filed its "Objections to Wildgrass Oil and Gas Committee's First Set of Written Discovery to Extraction Oil and Gas, Inc." On February 20, 2019, Wildgrass filed its "Response to Objections to Discovery." On February 21, 2019, the hearing officer issued an order (attached as Exhibit B) that overruled Extraction's objections in part and sustained them in part. In the order, the hearing office notes that he interprets Judge Jackson's order as requiring the Commission to hear such issues as health, safety, welfare, and the environment, the economic viability of Extraction, the economic viability of Extraction's proposed development in the unit, and whether Extraction's proposed development will result in just and equitable shares to all owners.

22. On February 28, 2019, Extraction filed a Motion in Limine in which it sought to exclude several of Wildgrass and ACT's exhibits and strike the testimony of Ann Marie Byers, a witness of Wildgrass and ACT. Also on February 28, 2019, Wildgrass filed "Evidentiary Motions and Objections to Witnesses or Exhibits" in which it sought to exclude several of Extraction's exhibits and one of Extraction's expert witnesses. On March 4, 2019, Extraction filed a Response to Wildgrass's evidentiary motions and objections.

23. On March 4, 2019, Mr. Brian and Ms. Tiffany Kilcoyne withdrew their protest.

24. At the Final Prehearing Conference held on March 5, 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 the hearing officer's rulings, the analysis of which was articulated on the record during the Final Prehearing Conference. The Final Prehearing Order is attached as Exhibit C.

HEARING

25. The Commission heard this matter at its March 11-12, 2019 hearing, at which Extraction, WOGC, and ACT were present. The hearing lasted approximately seven-hours.

26. At the outset of the hearing, Extraction raised a standing objection to WOGC and ACT presenting issues related to public health, safety, and welfare and environment and economics. Similarly, Wildgrass noted that it had a standing objection to 1) the Commission's jurisdiction given the theory that the rule of capture does not apply to non-transient minerals, 2) the fact that Wildgrass does not have a full and fair opportunity to present its case because one hour and fifteen minutes is an insufficient amount of time, 3) Extraction has not met the procedural requirements regarding notice in that Extraction only provided unleased landowners 35 days instead of 60 days, and 4) Wildgrass's discovery as to Extraction's economics was inappropriately limited to Extraction's public financial information. The Commission noted the parties' objections but proceeded with the hearing without ruling on them.

27. In its case-in-chief, Extraction presented testimony from Jason Rayburn, Senior Staff Landman, Extraction Oil & Gas, Inc., Chandler Newhall, Senior Project Manager, Extraction Oil & Gas, Inc., and Clay Doke, Petroleum Engineer, Integrated Petroleum Technologies. Jason Rayburn testified about, *inter alia*, Extraction's ownership in the Application Lands, the lease offers that Extraction sent out, and how the terms of the offered leases are commensurate with prevailing lease offers. In particular, Mr. Rayburn testified that Extraction's final lease offers contained royalties as high as 20%, had minimum bonuses as high as \$1,500, and were for a term of three years. In addition, Mr. Rayburn testified that all lease offers made by Extraction included a no surface occupancy provision. Chandler Newhall testified about, *inter alia*, the process Extraction undertook with Broomfield to address concerns regarding health, safety, welfare, and the environment and various best management practices that the Livingston Wells use. Clay Doke testified about, *inter alia*, the economics of the project and specifically opined that the project is economic, will prevent waste, and will protect correlative rights. Wildgrass cross examined each of these three witnesses, and the Commission also asked the three witnesses numerous questions.

28. In the case-in-chief of Wildgrass and ACT, they presented testimony from Ann Marie Byers and Mark Lindner. Ann Marie Byers testified about, *inter alia*, some of the lease offers that Extraction sent out, how some individuals told her that they never received a lease offer or received the lease offer late, how Extraction was unwilling to change any of the terms of the offered lease, and how Extraction's final lease offer was not reasonable given concerns regarding health, safety, welfare, and the environment. Mark Lindner testified about, *inter alia*, his concerns about Extraction's economic viability and how he saw Extraction's lease offer as a take-it-or-leave-it contract in which he had no ability to negotiate the lease terms. Extraction cross examined these two witnesses, and the Commission also asked the two witnesses numerous questions.

29. After the close of Wildgrass's and ACT's case-in-chief, the Commission allowed members of the public to present statements pursuant to Commission Rule 510. Several members of the public gave statements regarding, *inter alia*, health and safety concerns, deficiencies in the Commission's Rules, and how some individuals living in the Application Lands felt pressured to sign an oil and gas lease. Ms. Jean Lim, one of Wildgrass's witnesses, also delivered a 510 statement to the Commission. Wildgrass elected not to call Ms. Lim as a witness due to time constraints, and the Commission permitted Ms. Lim to instead give a 510 statement.

30. Extraction elected to present a rebuttal case in which it called Jason Rayburn, Chandler Newhall, Eric Christ, Extraction's Vice President, General Counsel, and Corporate Secretary, Dr. Tami McMullin, Senior Toxicologist with the Center for Toxicology & Environmental Health, LLC, and Dollis Wright, President of Quality Environmental Professional Associates, Inc. Jason Rayburn testified that, *inter alia*, Extraction was willing to change the lease terms and that Extraction had asked Wildgrass to perform a redline of the lease but that Extraction did not receive

a response. Chandler Newhall testified that, *inter alia*, officials from Extraction met with Ann Marie Byers in 2016 but that there was no discussion regarding lease terms at the meeting. Eric Christ testified that, *inter alia*, Extraction is financially viable. Dr. Tami McMullin testified about, *inter alia*, the levels of benzene associated with Extraction's oil and gas activities. Dollis Wright testified that, *inter alia*, in her opinion some of the studies regarding health risks and oil and gas activities are inconclusive.

31. After Extraction finished its rebuttal case, WOGC and ACT had the opportunity to ask questions of the rebuttal witnesses. However, counsel to WOGC and ACT advised the Commission that it did not have sufficient time left to examine these witnesses. The Commission asked counsel for Wildgrass and ACT how much additional time they would need to question Extraction's last two rebuttal witnesses, present any rebuttal witnesses for Wildgrass and ACT, and to present their closing statement. Wildgrass and ACT thanked the Commission for offering additional time, but ultimately rejected the offer. Counsel stated that they had already tailored their case to just one hour and fifteen minutes. Accordingly, the Commission proceeded with closing statements without giving Wildgrass and ACT additional time.

32. After the parties finished presenting their closing arguments, the Commission closed the record. The Commission then asked Assistant Attorney General Kyle Davenport for a summary of what a pooling application needs to satisfy. In terms of what constitutes a reasonable lease offer, Mr. Davenport encouraged the Commissioners to look at C.R.S. § 34-60-116(7)(d), which in part provides that the Commission shall not enter a pooling order over the protest of an owner "unless the commission has received evidence that the unleased mineral owner has been tendered, no less than sixty days before the hearing, a reasonable offer to lease upon terms no less favorable than those currently prevailing in the area." As for the Commission Rules, Mr. Davenport reminded the Commission that Commission Rule 530 sets forth what the Commission should consider when determining whether a reasonable lease has been offered. Specifically, Rule 530 enumerates several specific lease terms that the Commission should examine as well as "[s]uch other lease terms as may be relevant."

33. Following Mr. Davenport's summary of the regulations and Act, the Commissioners deliberated. Some of the Commission's comments made during deliberation are set forth below:

- a. Commissioner Jolley noted that Colorado's pooling statute probably needs some adjustments, but that the Commission is dealing with the statute how it is currently written. Commissioner Jolley also noted that while Extraction probably could have been more forthright early on its lease negotiations, the final lease offers from Extraction were about as good as he had seen, especially as to the 20% royalty amount, lease term, and bonus payment.
- b. Commissioner Boigon opined that if the hearing would have been limited to whether the tendered offers were reasonable and complied with the Act and the Commission Rules, the parties could have had a much more focused discussion. Commissioner Boigon opined that—in his view—a lot of extraneous issues were brought into the proceeding, including issues of public health, safety, and welfare, and that such issues were inappropriate for a pooling hearing. Commissioner Boigon went on to state that the pooling process is not very clear and does not work well in a subdivision setting in which there are hundreds and hundreds of homeowners. Pooling was not originally intended to apply in this type of situation and neither the Act nor the Commission Rules were written with this in mind. Commissioner Boigon

concluded, however, that Extraction had followed customary practice, had tendered the information and materials that the Rule requires, and had made offers that satisfy the Act. Regarding the issues of public health, safety, and welfare, Commissioner Boigon opined that these issues already had been considered at length and that he had never seen a more detailed, intensive, and admirable process than what the City and County of Broomfield went through in negotiating with Extraction its Operator Agreement.¹ Bringing these issues back in this proceeding, in Commissioner Boigon's view, is a collateral attack on the permits that the Commission issued after the negotiation of the very detailed Operating Agreement between Extraction and Broomfield.

- c. Commissioner Ager similarly concluded that Commission must apply the Act as it is currently written and that Extraction's lease offers were fair when compared to other leases.
- d. Commissioner Overturf expressed concern that Extraction had failed to show that the terms of the offered oil and gas leases were fair and reasonable. Commissioner Overturf argued that Extraction had not produced other nearby leases, between other operators and mineral owners² to allow her to determine what lease terms were fair and reasonable. Commissioner Overturf also opined that the jurisdictional issue Wildgrass and ACT raised was interesting but that the briefing by Wildgrass and ACT was inadequate for her to fully consider it. Commissioner Overturf concluded that, on the basis of what was presented, there was insufficient information regarding how a jurisdictional decision like that which Wildgrass was asking the Commission to make would affect the countless other existing pooling orders.

2. After deliberations had concluded, the Commission voted five-to-one to approve Extraction's Application.

COMMISSION CONCLUSIONS

3. Pursuant to Section 34-60-116(6), C.R.S., a pooling order shall be entered upon terms that are just and reasonable so that each owner in the drilling and spacing unit is afforded the opportunity to receive his just and equitable share of production without unnecessary cost.

4. Commission Rule 530, in effect in 2018, provides that an applicant must demonstrate that it provided the unleased mineral owners in the drilling and spacing unit with a reasonable offer to lease and a well election providing the following information: the location and objective depth of the well, the estimated spud date or range within which the well is to be spud, and the estimated drilling and completion costs of the well. The Rule further provides that the applicant must provide the working interest owners with well elections that satisfy Rule 530.

5. Pursuant to Section 34-60-116, C.R.S., unleased mineral owners must be afforded 60 days to consider the lease offer and well elections.

¹ The Operator Agreement sets forth how oil and gas development in this unit, and other units in Broomfield, can proceed, including necessary best management practices and other protections for public health, safety, welfare, and the environment.

² In its discovery request, Wildgrass only asked for leases or lease offers to which Extraction is a party or assignee.

6. The Commission must approve a pooling application if it complies with Section 34-60-116, C.R.S., and Rule 530. Neither Section 116 or Rule 530 require the Commission to consider in a statutory pooling proceeding project economics, the financial viability of the applicant, or concerns related to public health, safety, and welfare and environment. However, pursuant to the hearing officer's interpretation of Judge Jackson's order, WOGC and ACT were permitted to present evidence regarding such issues as health, safety, welfare, and the environment, the economic viability of Extraction, the economic viability of Extraction's proposed development in the unit, and whether Extraction's proposed development will result in just and equitable shares to all owners.

7. Evidence presented at the hearing showed that Extraction properly complied with Rule 530 and Section 34-60-116, C.R.S., by having provided WOGC members and ACT's predecessors-in-interest reasonable lease offers and well elections with all the information required by Rule 530.

ORDER

IT IS HEREBY ORDERED:

1. The Protest filed by WOGC and ACT is DENIED;

2. Pursuant to the provisions of §34-60-116, C.R.S., as amended, of the Oil and Gas Conservation Act, all interests in an approximate 1,600-acre drilling and spacing unit established by Order Nos. 407-2256 and 407-2274 for the below-described lands are hereby pooled, for the development and operation of the Niobrara and Codell Formations, effective as of the earlier of the date of the Application, or the date that any of the costs specified in §34-60-116(7)(b), C.R.S., are first incurred for the drilling of the Livingston S19-25-14C Well (API No. 05-014-20757), the Livingston S19-25-13N Well (API No. 05-014-20752), the Livingston S19-25-12N Well (API No. 05-014-20750), the Livingston S19-25-11C Well (API No. 05-014-20749), the Livingston S19-25-10N Well (API No. 05-014-20748), the Livingston S19-25-9N Well (API No. 05-014-20746), the Livingston S19-25-8C Well (API No. 05-014-20754), the Livingston S19-25-7N Well (API No. 05-014-20751), the Livingston S19-25-6N Well (API No. 05-014-20747), the Livingston S19-25-5C Well (API No. 05-014-20755), the Livingston S19-25-4N Well (API No. 05-014-20756), the Livingston S19-25-3N Well (API No. 05-014-20758), and the Livingston S19-25-2C Well (API No. 05-014-20753) (the "Wells"):

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

Section 7: S½

Section 18: All

Section 19: All

3. The production obtained from the drilling and spacing unit shall be allocated to each owner in the unit on the basis of the proportion that the number of acres in such tract bears to the total number of mineral acres within the drilling and spacing unit; each owner of an interest in the drilling and spacing unit shall be entitled to receive its share of the production of the Wells located on the drilling and spacing unit applicable to its interest in the drilling and spacing unit.

4. Any working interest owner who does not elect to participate in the Well(s) or fails to make a timely election is hereby deemed to be nonconsenting and is subject to the penalties as provided for in §34-60-116(7), C.R.S. The nonconsenting working interest owner must

reimburse the consenting owners for the owner's proportionate share of the costs and risks of drilling and operating the Well(s) from the owner's proportionate share of production, subject to non-cost bearing interests, if and to the extent that the royalty is consistent with the lease terms prevailing in the area and is not designed to avoid the recovery of costs provided for in §34-60-116(7)(b), C.R.S., until costs and penalties are recovered as set forth in §34-60-116(7), C.R.S.

5. Any unleased owner who does not elect to participate in the Well(s) or fails to make a timely election is hereby deemed to be nonconsenting and is subject to the penalties as provided for in §34-60-116(7), C.R.S. Any party seeking the cost recovery provisions of §34-60-116(7), C.R.S., shall first comply with subsection (d) for any subsequent well(s).

6. Each nonconsenting unleased owner within the drilling and spacing unit shall be treated as the owner of the landowner's royalty to the extent of 12.5% of its record title interest, whatever that interest may be, until such time as the consenting owners recover, only out of each nonconsenting owner's proportionate 87.5% share of production, the costs specified in §34-60-116(7)(b), C.R.S. After recovery of such costs, each unleased nonconsenting mineral owner shall then own its proportionate 8/8ths share of the well, surface facilities and production, and then be liable for its proportionate share of further costs incurred in connection with the well as if it had originally agreed to the drilling.

7. The operator of the Wells drilled on the above-described drilling and spacing unit shall furnish the nonconsenting owners with a monthly statement of all costs incurred, together with the quantity of oil and gas produced, and the amount of proceeds realized from the sale of production during the preceding month.

8. In accordance with §34-60-116(7)(a)(III), C.R.S., a nonconsenting owner is immune from liability for costs arising from spills, releases, damage, or injury resulting from oil and gas operations on the drilling and spacing unit.

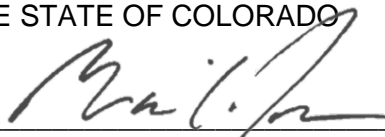
9. Nothing in this order is intended to conflict with §34-60-116, C.R.S., as amended. Any conflict that may arise shall be resolved in favor of the statute.

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 Larsen, Secretary

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

IN THE MATTER OF THE PROMULGATION AND)	CAUSE NO. 407
ESTABLISHMENT OF FIELD RULES TO GOVERN)	
OPERATIONS FOR THE NIOBARA AND CODELL)	DOCKET NO. 181000799
FORMATIONS, WATTENBERG FIELD,)	
BROOMFIELD COUNTY, COLORADO)	TYPE: POOLING

CASE MANAGEMENT ORDER

The parties are Extraction Oil & Gas, Inc. ("Extraction") as Applicant; Wildgrass Oil and Gas Committee ("WOGC") and Affected Coloradans Together ("ACT") as Protestants; and Brian and Tiffany Kilcoyne as Protestants, (collectively, the "Parties").

Stipulation to Facts and Authenticity of Documents

At this point in time, there are no stipulated facts between the Parties. The Parties may stipulate to facts at the time of filing their respective Prehearing Statements.

Disputed Issues

Extraction:

- Extraction's Application to pool all interests in an approximate 1,600-acre drilling and spacing unit established by Order Nos. 407-2256 and 407-2274 for the S½ of Section 7 and all of Sections 18 and 19, Township 1 South, Range 68 West, 6th P.M., and subjecting any nonconsenting interests to the cost recovery provisions of Section 34-60-116(7), C.R.S., for the drilling of the Livingston S19-25-14C (API NO. 05-014-20757), Livingston S19-25-13N (API No. 05-014-20752), Livingston S19-25-12N (API No. 05-014-20750), Livingston S19-25-11C (API No. 05-014-20749), Livingston S19-25-10N (API No. 05-014-20748), Livingston S19-25-9N (API No. 05-014-20746), Livingston S19-25-8C (API No. 05-014-20754), Livingston S19-25-7N (API No. 05-014-20751), Livingston S19-25-6N (API No. 05-014-20747), Livingston S19-25-5C (API No. 05-014-20755), Livingston S19-25-4N (API No. 05-014-20756), Livingston S19-25-3N (API No. 05-014-20758), and the Livingston S19-25-2C (API No. 05-014-20753) wells (the "Wells"), for the development and operation of the Niobrara and Codell Formations complies with Section 34-60-116, C.R.S., and Commission Rule 530.
- More than sixty (60) days before the hearing in this matter, Extraction tendered, in writing, to all unleased mineral owners the information required by Rule 530 and Section 34-60-116(7)(d)(I), C.R.S., including: (1) a reasonable offer to lease upon terms no less favorable than those currently prevailing in the area at the time the Application was made; and (2) an offer to participate in the above-referenced wells with such offer including an Authorization for Expenditure with estimated drilling

and completion costs for each well, each owner's share of such estimated drilling and completion costs, the locations and objective depths of the wells, and the estimated spud dates or range of time within which spudding is to occur for the wells. Extraction further provided all unleased mineral owners with a copy of the Commission's pooling brochure.

WOGC:

- Extraction's Application to pool all interests in an approximate 1,600-acre proposed drilling and spacing unit ["PDSU"] for the S½ of Section 7 and all of Sections 18 and 19, Township 1 South, Range 68 West, 6th P.M., failed to comply with notice requirements to the affected mineral owners ["Owners"].
- Extraction failed to make reasonable lease offers to the Owners in the affected PDSU, instead making a generic lease offer which greatly benefitted Extraction at the expense of the Owners. Extraction has taken the stated position that Owners are not entitled to a lease negotiation, only a "take it or leave it" offer.
- Extraction failed to make financial disclosures regarding the profitability of the proposed project, whether the project is financially viable at this time, whether development at this time is an efficient use of the resource.
- The health and safety of the proposed project has not been comprehensively evaluated using any scientific or quantitative means, including whether Extraction is using all cost-effective and feasible means of preventing and mitigating significant adverse environmental impacts to the extent necessary to protect public health, safety, and welfare.
- The COGCC has not required Extraction post bonds to the extent necessary to ensure that adequate funds will be available for plugging and abandonment including reclamation.
- Colorado's forced pooling statute is currently under constitutional review in Federal Court. The Commission should stay all proceedings under C.R.S. § 34-60-116 and Rule 530 until such constitutional questions are resolved.

ACT:

- Extraction's Application to pool all interests in an approximate 1,600-acre proposed drilling and spacing unit ["PDSU"] for the S½ of Section 7 and all of Sections 18 and 19, Township 1 South, Range 68 West, 6th P.M., failed to comply with notice requirements to the affected mineral owners ["Owners"].
- Extraction failed to make reasonable lease offers to the Owners in the affected PDSU, instead making a generic lease offer which greatly benefitted Extraction at the expense of the Owners. Extraction has taken the stated position that Owners are not entitled to a lease negotiation, only a "take it or leave it" offer.
- Extraction failed to make financial disclosures regarding the profitability of the proposed project, whether the project is financially viable at this time, whether development at this time is an efficient use of the resource.
- The health and safety of the proposed project has not been comprehensively evaluated using any scientific or quantitative means, including whether Extraction

is using all cost-effective and feasible means of preventing and mitigating significant adverse environmental impacts to the extent necessary to protect public health, safety, and welfare.

- The COGCC has not required Extraction post bonds to the extent necessary to ensure that adequate funds will be available for plugging and abandonment including reclamation.
- Colorado's forced pooling statute is currently under constitutional review in Federal Court. The Commission should stay all proceedings under C.R.S. § 34-60-116 and Rule 530 until such constitutional questions are resolved.

Brian and Tiffany Kilcoyne

- Extraction has made bad faith offers to include residential property NOT included in the Livingston Pad spacing unit. Previous offers included our rental property that is not located in the 1600 -acre drilling and spacing unit established by Order Nos. 407-2256 and 407-2274. (Livingston Pad) (Exhibit "A", "B").
- Extraction failed to make a reasonable offer to lease upon terms no less favorable than those currently prevailing in the area at the time the Application was made. My husband and I made many attempts to not be force-pooled and contacted Extraction to communicate to them that we didn't want to be force-pooled but wanted a fair lease offer. However, the offers to us weren't comparable to what others were receiving in our neighborhood. We had been represented by Matt Sura but were not given the same compensation that all of Matt Sura's clients were given. (Exhibit "C", "D", "E").
- All offers made by Extraction have been one-sided "take it or leave it" offers. There is no negotiating. Although we do not live in the Wildgrass neighborhood, many of us in the Broadlands (which is included in the spacing unit) have not had reasonable offers from Extraction. I can tell you factually that I am speaking for hundreds of mineral owners that have experienced this "negotiation" and their so-called "reasonable offers." However, Extraction continues to build their pipeline and move forward on their Livingston Pad. This is presumptuous and not following COGCC's own rules.
- As filed in our protest, Extraction did not give us an offer to participate in the above-referenced wells within the COGCC's Rule 530 and Section 34-60-116(7)(d)(I). C.R.S. In fact, they mailed us first class mail the offer to participate on Oct.11 and we received it Oct. 13. However, their offer is dated July 17, 2018. (Exhibit "F", "G").
- We have spent endless hours on this issue to protect what is Constitutionally ours, private property rights. Colorado's forced pooling statute is currently under constitutional review in Federal Court because it violates the Fourteenth Amendment to the United States Constitution and 42 U.S.C. 1983. Nowhere in the Constitution does it exempt private corporations from this Constitutional right that property owners possess.

Filing and Service Requirements

Filing and Service. In the below deadlines, “file” means received electronically by the Hearing Officer by the date specified in this Order. All pleadings and exhibits should be sent electronically to the other Parties, the Hearing Officer, and to dnr_hearingapplications@state.co.us. Exhibits must be appropriately labeled as described below at the time of filing.

“Serve” means exchanges only between the Parties. Service will be complete upon electronic service pursuant to Rule 503.g, unless previously objected to by a Party. Any documents that are only required to be served on the other Parties (and not filed) will not be maintained in the Commission’s hearing files or included in the Commissioners’ portfolio.

Page limitations. All filings are limited to 10 pages single-spaced, excluding the certificate of service and any attached exhibits, unless otherwise agreed to by the Parties and authorized by the Hearing Officer.

Discovery

The following limits on formal discovery shall apply:

1. WOGC and ACT may together serve 20 Interrogatories on Extraction.
2. WOGC and ACT may together serve 20 Requests for Production on Extraction.
3. WOGC and ACT may together serve 20 Requests for Admission on Extraction.

Motion Practice

Duty to Confer:

The Parties are bound by the rule of Civil Procedure requiring conferral prior to the filing of a motion. See C.R.C.P. Rule 121 § 1-15(8): “Unless a statute or rule governing the motion provides that it may be filed without notice, moving counsel shall confer with opposing counsel before filing a motion. The motion shall, at the beginning, contain a certification that the movant in good faith has conferred with opposing counsel about the motion. If the relief sought by the motion has been agreed to by the parties or will not be opposed, the court shall be so advised in the motion. If no conference has occurred, the reason why shall be stated.”

Failure to comply with C.R.C.P. Rule 121 § 1-15(8) may result in the rejection of the filing by the Hearing Officer.

Responses and Replies:

Unless different deadlines are set by the Hearing Officer, the Parties are bound by the same time frames set forth by C.R.C.P. Rule 121 § 1-15(1)(b)-(c). Specifically, once the moving party has filed a motion, the responding party shall have 21 days in which to file a responsive brief, and the moving party shall have 7 days to file a reply brief. No sur-replies are authorized without leave of the Hearing Officer.

Continuances:

If this matter is continued beyond its original hearing date, as specified by this Case Management Order, the dates and deadlines of this Case Management Order still control. Any filings, motions, or requests not set forth in this Case Management Order are prohibited without leave of the Hearing Officer.

The dates and deadlines set by this Case Management Order, shall remain in full force and effect until this matter is disposed of by the Commission.

Dispositive Motions:**I. C.R.C.P. 12(b) Motions**

- a. Motions brought pursuant to C.R.C.P. 12(b) are discouraged if the defect is correctable by the filing of an amended pleading.
- b. All requests for relief under any part of C.R.C.P. 12 must be brought in a single motion. All motions to dismiss shall state in the caption or in the opening paragraph under which rule or subsection thereof such motion is filed.
- c. With respect to motions brought pursuant to C.R.C.P. 12(b)(5):
 - i. For each claim for relief that the movant seeks to have dismissed, the movant shall clearly enumerate each element that movant contends must be alleged, but was not.
 - ii. The respondent should utilize the same format for each challenged claim. If the respondent disputes that a particular element must be alleged, the element should be identified as disputed and addressed in an accompanying brief. If the respondent contends that a proper and sufficient factual allegation has been made in the complaint, the respondent should specifically identify the page and paragraph containing the required factual allegation.
- d. Rule 12(b) motions should not be stated in the alternative as a Rule 56 motion for summary judgment. If matters outside the pleadings are submitted in support of or opposition to a Rule 12(b) motion, the party should discuss whether the 12(b) motion should be converted to a summary judgment motion. In such a case, the

Hearing Officer may issue an order to show cause why the motion should not be treated as a Rule 56 motion, or the parol submissions may be disregarded.

II. C.R.C.P. 56 Motions

- a. These procedures contemplate the filing of a single motion for summary judgment by a party. A party may NOT file multiple motions for summary judgment without obtaining permission from the Hearing Officer. Such permission will only be given in exceptional circumstances.
- b. Statement of Undisputed Material Facts:
 - i. The purpose of these procedures is to establish facts and determine which of them are in dispute. Legal argument is not permitted here and should be reserved for separate portions of the briefs. If, for example, a party believes that an established fact is immaterial that belief should be expressed in the part of the brief devoted to legal argument, and the fact should be admitted. If, on the other hand, a party believes that the reference to material in the record does not support the claimed fact, that fact may be denied and factual argument may appropriately be made pursuant to these procedures.
 - ii. Because of the voluminous factual materials which are frequently submitted with motions for summary judgment, all Rule 56 motions must comply with the following requirements:
 1. In a section of the brief styled "Statement of Undisputed Material Facts," the movant shall set forth in simple, declarative sentences, separately numbered and paragraphed, each material fact which the movant believes is not in dispute and which supports movant's claim that movant is entitled to judgment as a matter of law.
 2. Each separately numbered and paragraphed fact must be accompanied by a specific reference to material in the record which establishes that fact. General references to pleadings, depositions, or documents are insufficient if the document is over one page in length. Only if the nature of the material fact does not permit a specific reference (e.g., "The contract contains no provision for termination."), is a general reference sufficient. A "specific reference" means:
 - a) In the case of materials filed with the Commission, the title of the document, the date on which it was filed or served, and a specific paragraph or page and line number; or, if the document is attached to the motion, the paragraph or page and line number;

- b) In the case of interrogatories or requests for admission (the pertinent parts of which must be filed with the motion), the number of the interrogatory or request;
 - c) In the case of depositions or other documents bearing line numbers, the specific page and line(s) establishing the fact;
 - d) In the case of affidavits submitted in support of the motion, the specific paragraph number establishing the fact;
 - e) In the case of other materials not numbered by paragraph, line, or page, a reference which will enable the Commission to ascertain the fact without reviewing the entire document; the effort at specificity may be made by highlighting, manual underscoring, or pagination supplied by the movant.
3. Any party opposing the motion for summary judgment shall, in a section of the brief styled "Response to Statement of Undisputed Material Facts," admit or deny the asserted material facts set forth by the movant. The admission or denial shall be made in separate paragraphs numbered to correspond to movant's paragraph numbering. Any denial shall be accompanied by a brief factual explanation of the reason(s) for the denial and a specific reference to material in the record supporting the denial.
4. If the party opposing the motion believes that there exist additional disputed questions of fact which it has not adequately addressed in the Response to Statement of Undisputed Material Facts, the party shall, in a separate section of the party's brief styled "Statement of Additional Disputed Facts," set forth in simple, declarative sentences, separately numbered and paragraphed, each additional, material disputed fact which undercuts movant's claim that it is entitled to judgment as a matter of law. Each separately numbered and paragraphed fact shall be accompanied by a specific reference to material in the record which establishes the fact or at least demonstrates that it is disputed.
5. Any reply brief must comply with the following requirements:
- a) In a separate section styled "Reply Concerning Undisputed Facts," include any factual reply which movant cares to make regarding undisputed facts, supported by specific references to material in the record. The reply will be made in separate paragraphs numbered according to the motion and the opposing party's response.
 - b) In a separate section styled "Response Concerning Disputed Facts" (with respect to each fact which the opposing party, claims to be in

dispute), either admit that the fact is disputed or supply a brief factual explanation for its position that the fact is undisputed, accompanied by a specific reference to material in the record which establishes that the fact is undisputed. This will be done in paragraphs numbered to correspond with the opposing party's paragraph numbering.

- c) All summary judgment exhibits shall be labeled both by exhibit number or letter and by name, e.g., Exhibit 1 - Smith Affidavit. Applicant and any Joint Exhibits will be labeled numerically. The Protestant will label its exhibits alphabetically.
- d) Failure to follow these procedures may result in an order striking or denying the motion or brief, and it will have to be resubmitted. Repeated failure to follow them may result in an order granting other proper relief.

Prehearing Statements

Shall Contain the Following:

1. A statement of the Party's positions;
2. Witness list with a brief description of testimony, including the expected time necessary for the testimony of each witness and resumes of any expert witness;
3. Exhibit list and attached (electronic) exhibits;
 - Applicant and any joint exhibits will be labeled numerically. The Protestant will label its exhibits alphabetically. The Parties will endeavor to minimize the number of duplicative exhibits and resolve any objections to each Party's exhibits and witnesses prior to filing. Each proposed exhibit will be labeled separately and filed electronically as a separate pdf file.
 - The Hearing Officer will make a final determination of the exhibits admitted in the hearing before the Commission. Each Party's final, admitted exhibits for hearing will be submitted as one pdf file for all its exhibits being filed.
 - The Parties will both be given an electronic copy of the final Commissioners' portfolio before the hearing and are encouraged to reference the Bates-numbered pages of that portfolio.
4. A statement of the open legal issues;
5. A statement of the relief requested; and
6. Estimated time required for case presentation at hearing. The Hearing Officer will determine the final time allocations for each Party to present its case after consideration of the prehearing statements.

Responses to prehearing statements are permitted. However, replies are not authorized.

Settlement

In the event settlement occurs after the settlement deadline, this matter will automatically be continued to the next hearing cycle.

Any questions concerning this Order or any other aspect of the case must be addressed to the Hearing Officer by email (Michael.Eden@state.co.us), with a copy to the other Parties. The Hearing Officer sets the following schedule:

Task	Date
Initial Prehearing Conference	February 14, 2019 at 12:00 p.m.
Deadline for WGOC and ACT to <u>serve</u> discovery requests	Monday, February 18, 2019
Deadline for Extraction to file any objection regarding WGOC and ACT's discovery requests	Tuesday, February 19
Deadline for Extraction to <u>serve</u> responses to discovery requests	Friday, February 22, 2019
Deadline to file prehearing statements, witness lists, and proposed electronic exhibits	Tuesday, February 26, 2019
Deadline to file any evidentiary motions and objections to witnesses or exhibits; deadline to file responses to prehearing statements, list of rebuttal witnesses and exhibits, rebuttal exhibits	February 28, 2019, at 12:00 p.m.
Deadline to file joint proposed final prehearing order and stipulations of fact	March 4, 2019
Settlement Deadline	March 5, 2019
Final prehearing conference, including oral argument on any motions	March 5, 2019 at 2:00 p.m.
Deadline to file proposed orders, an electronic copy of final admitted exhibits, and any PowerPoint or other demonstrative exhibit that will be used at the hearing	March 5, 2019
HEARING DATE	March 12, 2019

IT IS SO ORDERED

Dated: February 14, 2019

OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO,

A handwritten signature in black ink, appearing to read "Michael Eden", written over a horizontal line.

Michael Eden, Hearing Officer

CERTIFICATE OF SERVICE

On February 14, 2019, a true and correct copy of the foregoing Case Management Order was sent by electronic mail to the following:

Kate Merlin
Joe Salazar
Attorney for Wildgrass Oil and Gas Committee
and Affected Coloradans Together
kate@katemerlinlaw.com
joe@corising.org

Joseph C. Pierzchala
Geoffrey W. Storm
Attorneys for Extraction Oil & Gas, Inc.
jpierzchala@wsmtlaw.com
gstorm@wsmtlaw.com

Brian and Tiffany Kilcoyne
Pro se
tiffkilcoyne@gmail.com



Michael Eden, Hearing Officer

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

IN THE MATTER OF THE PROMULGATION AND)	CAUSE NO. 407
ESTABLISHMENT OF FIELD RULES TO GOVERN)	
OPERATIONS FOR THE NIOBARA AND CODELL)	DOCKET NO. 181000799
FORMATIONS, WATTENBERG FIELD,)	
BROOMFIELD COUNTY, COLORADO)	TYPE: POOLING

ORDER

This matter comes before the Hearing Officer on the “Objections to Wildgrass Oil and Gas Committee’s First Set of Written Discovery to Extraction Oil and Gas, Inc.” (“Objections”) filed by Extraction Oil & Gas, Inc. (“Extraction”). For the reasons set forth below, Extraction’s objections are overruled in part and sustained in part.

Background

In connection with the federal case in which Wild Grass is challenging the constitutionality of Colorado’s pooling statute a hearing occurred before the Honorable R. Brook Jackson, United States District Judge for the District of Colorado. On Tuesday, February 12, Judge Jackson ordered the Commission to hear Dkt. No. 18100799 at the Commission’s March hearing. Judge Jackson further ordered that the Commission hear issues relating to health, safety, welfare and the environment, the economic viability of Extraction, the economic viability of Extraction’s proposed development in the unit, and whether Extraction’s proposed development will result in just and equitable shares to all owners.

On February 14, 2019, the Hearing Officer entered a Case Management Order (“CMO”) setting forth the pre-hearing deadlines for this matter. The CMO granted in full the discovery request of Wildgrass Oil and Gas Committee (“WOGC”) and Affected Coloradans Together (“ACT”) in terms of number interrogatories, requests for production, and requests for admission. The CMO requires WOGC and ACT to serve their discovery requests on Extraction by Monday, February 18; requires Extraction to file any objection to the discovery requests by Tuesday, February 19; and requires Extraction to serve responses to discovery requests by Friday, February 22. The deadline for both parties to file witness lists and proposed exhibits is Tuesday, February 26.

As scheduled, on February 18, WOGC served its discovery requests on Extraction and on February 19, Extraction filed its Objections. At approximately 8:00 a.m. on Wednesday, February 20, the Hearing Officer ordered WOGC to respond to Extraction’s Objections by 3:00 p.m. that day. At approximately 4:00 p.m., the Hearing Officer emailed the parties noting that WOGC had not responded by the 3:00 p.m. deadline and ordering WOGC to file any response by Thursday, February 21 at 7:00 a.m. At approximately 7:00 p.m. on Wednesday, February 20, WOGC filed its “Response to Objections to Discovery” (“Response”).

Analysis

The Rules of the Colorado Oil and Gas Conservation Commission (“Commission”) incorporate the Colorado Rule of Civil Procedure. See Commission Rule 519.a. The scope of discovery is set forth in C.R.C.P 26(b)(1):

[P]arties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

Throughout its Objections, Extraction argues that much of the discovery that WOGC seeks is not relevant to a pooling procedure. As noted by both parties, however, what is relevant in this proceeding must be viewed in light Judge Jackson's order. As noted above, the Hearing Office interprets Judge Jackson's order as requiring the Commission to hear such issues as health, safety, welfare, and the environment, the economic viability of Extraction, the economic viability of Extraction's proposed development in the unit, and whether Extraction's proposed development will result in just and equitable shares to all owners. Thus, in this particular case, these issues are relevant.

Nevertheless, the Hearing Officer does not interpret Judge Jackson's order to allow unfettered discovery, even if such discovery might lead to relevant evidence. Rather, the appropriate scope of discovery is still controlled by C.R.C.P. 26, which requires the Hearing Officer to, *inter alia*, limit discovery so that it is proportional to the needs of the case and consider whether the burden or expense of the proposed discovery outweighs its likely benefit. In this case, the Commission needs to hear this case by March 12. Accordingly, what constitutes appropriate discovery must be viewed in the context that tomorrow, February 22, is the deadline for Extraction to file its responses to WOGC's discovery requests, and that on Tuesday, February 26, all parties must file their witness lists and proposed exhibits.

Interrogatory No. 8

Interrogatory No. 8 requests that Extraction identify any and all non-public documents that describe Extraction's financial condition, including, but not limited to any and all documents with any lenders describing profits, losses, revenues, loans, capital expenditures, operational expenditures or other similar factors and indicators of the company's financial condition; and any and all communications exchanged internally that describe the company's financial condition.

Extraction argues that information regarding its financial health is available in its annual and quarterly reports to the United States Securities and Exchange Commission

("SEC"), together with its publically available investor presentations describing its projects with the City and County of Broomfield. WOGC argues in its Response that these materials are insufficient: "Extraction's SEC filings are insufficient for purposes of understanding whether Extraction is financially viable on a long-term ongoing basis, and whether it has the ability to meet its current commitments." (Response, p.2).

The Hearing Officer sustains Extraction's objection to Interrogatory No. 8. Extraction's SEC filings are designed to allow the public to assess its financial viability. WOGC has failed to set forth any specific reason why Extraction's SEC filings are insufficient to understand Extraction's long-term financial viability and its ability to meet its current commitments. Given the nature of this case, the Hearing Officer finds that requiring Extraction to identify all documents describing its financial condition from its inception is not proportional to the needs of this case and that the burden of the proposed discovery outweighs its likely benefit.

Interrogatory No. 11

Interrogatory No. 11 requests that Extraction identify, in detail, any and all documents that involve leases, including accepted and rejected offers, made or adopted by Extraction to other mineral owners in a 25 square mile radius of the Drilling Unit. Extraction argues that it should only be required to disclose those leases necessary to determine whether WOGC received a reasonable lease offer under Commission Rule 530. WOGC argues that the Commission's Rules for identifying fair and reasonable lease terms are insufficient and that Judge Jackson "ordered that WOGc [sic] be allowed to discover how Extraction came up with the lease terms." (Response, p.3).

The Hearing Officer sustains Extraction's objection to Interrogatory No. 11 in part and overrules it in part. Commission Rule 530 states that when the Commission determines whether a reasonable lease offer has been tendered, it must consider the terms of the leases "for the drilling and spacing unit in the application and for all cornering and contiguous units that are under the proposed lease." Commission Rule 530(c). The Hearing Officer does not interpret Judge Jackson's order as invalidating or in any way rewriting Commission Rule 530. Unless and until Commission Rule 530 changes, the Hearing Officer and Commission are bound to follow its terms as written. Thus, the Hearing Officer finds that Interrogatory No. 11 is appropriate only as to those leases that the Commission must consider under Commission Rule 530.

Interrogatory No. 12

Interrogatory No. 12 requests that Extraction identify any and all documents maintained by Extraction that discuss market conditions and hydraulic fracturing of the Drilling Unit. Extraction argues that the requested information is not relevant, is overly broad, and would require disclosure of confidential business information. In its Response, WOGC states that it is willing to narrow the time scope of this interrogatory to two years and that it is not seeking confidential or proprietary technical documents discussing completion methods. WOGC argues that in order to ascertain the just and equitable

shares that mineral owners might expect, "it is extremely relevant to have information regarding whether market conditions favor development at this time, or whether their minerals will be wasted by developing them at this time into what is already a highly saturated and devalued market." (Response, p.3).

The Hearing Officer overrules Extraction's objection to Interrogatory No. 12, provided that Interrogatory No. 12 is limited in scope to the past two years and further provided that Extraction need not disclose confidential or proprietary technical documents discussing completion methods. The Hearing Officer agrees that information regarding market conditions is relevant given Judge Jackson's order. Extraction does not argue that WOGC has any other means to access the requested information. Further, limiting the information to the past two years for the relevant drilling unit helps ensure that the discovery is proportionate and that its burden does not outweigh its likely benefit.

Interrogatory No. 14

Interrogatory No. 14 seeks a list and description of all communications received by Extraction regarding mineral lease offers, terms, conditions, including (but not limited to those which reference) the possibility of forced or involuntary pooling. Extraction objects on the basis that the request is overly broad and unduly burdensome because it is not limited in time or geographic scope, or subject matter. In its Response, WOGC notes that it is open to discussion about narrowing this interrogatory and that the requested information goes to whether the lease offers were fair and reasonable.¹

The Hearing Officer sustains Extraction's objection to Interrogatory No. 14 in part and overrules it in part. As noted in the analysis of Interrogatory No. 11, Commission Rule 530 controls how the Commission determines whether there was a reasonable lease offer. The only relevant leases in the matter are those that the Commission must consider under Commission Rule 530. Accordingly, the communications that Extraction must produce in response to Interrogatory No. 14 are only those applicable to leases governed by Rule 530 in this matter.

Request No. 5

Request No. 5 seeks all draft or final planning schedules, geological surveys, engineering surveys, and/or financial schedules for the development of the subject Drilling Unit. Extraction objects on the basis of relevance and proportionality and asserts that everything other than the financial schedules has already been provided to WOGC or is publicly available on the City and County of Broomfield's website. WOGC argues that the requested information goes to the issue of just and equitable shares.

The Hearing Officer sustains Extraction's objection to Request No. 5 in part and overrules it in part. The information sought in Request No. 5 is relevant to these proceedings. However, WOGC does not refute Extraction's assertion that everything

¹ While the Hearing Officer appreciates WOGC willingness to discuss narrowing this interrogatory, at this point such a discussion is infeasible given the time limitations in this case.

other than the financial schedules has already been provided to WOGC or is publicly available on the City and County of Broomfield's website. Given the nature of this case, requiring Extraction to produce final planning schedules, geological surveys, and engineering surveys that WOGC either already has or could easily access is not proportional and has little benefit. However, Extraction will be required to produce all draft or final financial schedules for the development of the subject drilling unit.

Request No. 6

Request No. 6 seeks all communications, internal or external, regarding the economics of the subject drilling unit, including negotiations with third parties. Extraction objects on the basis of relevance, proportionality, that it is not limited in time, and that "[t]he economics of developing the Lowell South Unit are in the possession of WOGC as it was produced to it in the spacing proceedings." (Objections, p.4). WOGC states that it is willing to limit the Request No. 6 to the past two years but asserts that the requested information is relevant to the issue of just and equitable shares.

The Hearing Officer sustains Extraction's objection to Request No. 6 in part and overrules it in part. The Hearing Officer finds that the economics of the drilling unit are relevant under Judge Jackson's order. While Extraction makes a vague assertion that WOGC already possess the "economics of developing" the unit, it is unclear that this covers the communications that Request No. 6 seeks. Accordingly, Extraction must adhere to Request No. 6 provided that the request is limited to the past two years.

Request No. 9

Request No. 9 seeks any and all communication exchanged between Extraction and any employee or agent of the City and County of Broomfield involving the drilling of the subject drilling unit. WOGC argues that Extraction and Broomfield have asked its members to "rely on the process of negotiation between [Extraction and Broomfield] as the sole means of protecting their property, their health and safety, and many other considerations." (Response, p.5). WOGC argues that because both Broomfield and Extraction are reluctant to disclose their communications regarding these negotiations, "a heightened amount of scrutiny [] should be applied." (*Id.*).

The Hearing Officer sustains Extraction's objection to Request No. 9. The Hearing Officer agrees that considerations of health and safety, among others, are relevant under Judge Jackson's order and that the agreements between Extraction and Broomfield regarding the drilling unit are therefore also relevant. However, the Hearing Officer does not see—and WOGC has not articulated—the importance of the communications leading up to the Extraction and Broomfield agreements. The Hearing Officer finds that requiring Extraction to produce all communications between Extraction and Broomfield involving the drilling of the subject drilling unit is not proportional to the needs of this case and that the burden of the proposed discovery outweighs its likely benefit.

Request No. 10

Request No. 10 seeks any and all documents that describe Extraction's financial condition to lenders, stakeholder, employees, or third parties. WOGC notes that it would be willing to impose a time limitation on this request but argues that the information is necessary to consider Extraction's long-term financial stability and its ability to meet the terms of the Operator Agreement and commitments to protect health, safety, and welfare or residents. (Response, p.5).

The Hearing Officer sustains Extraction's objection to Request No. 10. As set forth above in the analysis of Interrogatory No. 8, WOGC has failed to set forth any specific reason why Extraction's SEC filings are insufficient for understanding Extraction's long-term financial viability and its ability to comply with the terms of the Operator Agreement and meet its commitments to protect health, safety, and welfare. Given the nature of this case, the Hearing Officer finds that requiring Extraction to produce the requested documents—even if a time limitation is imposed—is not proportional to the needs of this case and that the burden of the proposed discovery outweighs its likely benefit.

Request No. 11

Request No. 11 asks for any and all communications exchanged between Extraction and any Commissioner or employee of the Commission, local government, or member of the public, involving the pooling of consenting or nonconsenting owners in the subject Drilling Unit. Extraction objects on the basis of relevance, that the request is overly broad, and that WOGC might obtain these documents via open records request. WOGC argues that it should not have the burden to obtain the requested information via CORA.

The Hearing Officer sustains Extraction's objection to Request No. 11. As an initial matter, WOGC has failed to articulate what purpose the requested information would serve. Thus, the Hearing Officer is left to speculate as to the need for and relevance of the requested information. To the extent this request seeks to establish the reasonableness of the lease offer, this request is already addressed by Request Nos. 3, 7, 12, 13, and 14—none of which Extraction objects to.

Request No. 15

Request No. 15 asks for all documents that Extraction intends to introduce at the hearing or otherwise intends to have made part of the record in this proceeding. WOGC argues that under the Rules of Civil Procedure, "a party may never introduce a document for the first time at a hearing without disclosing it to the other side." (Response, p.6).

The Hearing Officer sustains Extraction's objection to Request No. 15. The CMO sets forth the deadlines for disclosure of evidence in this case. As noted above, the deadline for both parties to file witness lists and proposed exhibits is Tuesday, February 26. The Hearing Officer will not require Extraction to file its proposed exhibits before WOGC does just because WOGC requested the same through discovery.

Request No. 16

Request No. 16 seeks all documents, including but not limited to statements, notes, communications, and other materials, that Extraction has provided to or received from individuals who have personal knowledge of the subject matter of this Pooling Application. WOGC argues that it is not seeking the disclosure of any privileged documents or those protected by law and that, while it is amenable to discussing narrowing the scope of the request, some amount of burden is unavoidable.

The Hearing Officer sustains Extraction's objection to Request No. 16. Request No. 16 appears to be a blanket request that would require Extraction to produce any statements or communications that WOGC failed to specifically request elsewhere. WOGC does not attempt to specify what it hopes to obtain from this request or how it is relevant. Given the nature of this case, the Hearing Officer finds that requiring Extraction to comply with Request No. 16 is not proportional to the needs of this case and that the burden of the proposed discovery outweighs its likely benefit.

Request No. 17

Request No. 17 seeks communications from local governments and citizens to Extraction regarding forced or involuntary pooling. Extraction objects on the basis of relevance, proportionality, and that it is overly broad. In its Response, WOGC notes that it is willing to discuss limiting the request by time or geographic area.

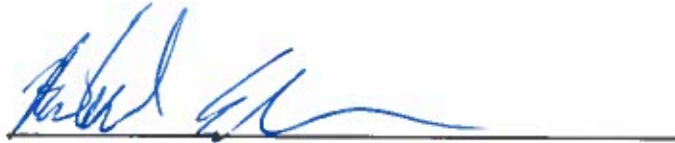
The Hearing Officer sustains Extraction's objection to Request No. 17. WOGC has failed to articulate what purpose the requested information would serve. The Hearing Officer cannot discern how the requested information relates to a reasonable lease offer, health, safety, welfare and the environment, the economic viability of Extraction, the economic viability of Extraction's proposed development in the unit, or whether Extraction's proposed development will result in just and equitable shares to all owners. In light of Extraction's objections and WOGC failure to set forth why it needs the requested information, the Hearing Officer finds Request No. 17 is vague, overly broad, and therefore not proportional to the needs of the case.

Conclusion

As set forth above, Extraction's objections to WOGC's discovery requests are overruled in part and sustained in part. Pursuant to the CMO and this Order, Extraction shall serve its discovery responses by tomorrow, February 21, 2019.

Dated: February 21, 2019

OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO,



Michael Eden, Hearing Officer

CERTIFICATE OF SERVICE

On February 21, 2019, a true and correct copy of the foregoing Case Management Order was sent by electronic mail to the following:

Kate Merlin
Joe Salazar
Attorney for Wildgrass Oil and Gas Committee
and Affected Coloradans Together
kate@katemerlinlaw.com
joe@corising.org

Joseph C. Pierzchala
Geoffrey W. Storm
Attorneys for Extraction Oil & Gas, Inc.
jpierzchala@wsmtlaw.com
gstorm@wsmtlaw.com

Brian and Tiffany Kilcoyne
Pro se
tiffkilcoyne@gmail.com



Michael Eden, Hearing Officer

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

IN THE MATTER OF THE PROMULGATION)	CAUSE NO. 407
AND ESTABLISHMENT OF FIELD RULES)	
TO GOVERN OPERATIONS FOR THE)	DOCKET NOS. 181000799
NIOBRARA AND CODELL FORMATIONS,)	
WATTENBERG FIELD, BROOMFIELD)	TYPE: POOLING
COUNTY, COLORADO)	

FINAL PREHEARING ORDER

This matter is set for hearing before the Commission on March 11–12, 2019 (“Hearing”). The parties are Extraction Oil & Gas, Inc. (“Extraction”), as applicant, and Wildgrass Oil and Gas Committee (“Wildgrass” or “WOGC”) and Affected Coloradans Together (“ACT”), as protestants, (together, the “Parties” and individually, a “Party”). This order identifies the admissible and authentic exhibits, relevant Party witnesses, and the time and order of the case presentation.

I. Rulings on Motions in Limine and Evidentiary Objections

On February 28, 2019, Extraction filed a Motion in Limine in which it sought to exclude several of Wildgrass and ACT’s exhibits and strike the testimony of Ann Marie Byers, a witness of Wildgrass and ACT. Also on February 28, 2019, Wildgrass filed “Evidentiary Motions and Objections to Witnesses or Exhibits” in which it sought to exclude several of Extraction’s exhibits and one of Extraction’s expert witnesses. On March 4, 2019, Extraction filed a Response to Wildgrass’s evidentiary motions and objections.

At the Final Prehearing Conference held on March 5, 2019, the Hearing Officer ruled on the parties’ evidentiary motions and objections. The following sets forth the results of Hearing Officer’s rulings, the analysis of which was articulated on the record during the Final Prehearing Conference:

- Extraction’s Motion in Limine is granted in part and denied in part. Extraction’s Motion in Limine is denied as to Exhibit B, Exhibit I, Exhibit J, Exhibit P, and Exhibit Q (except for the news article within Exhibit Q titled “State finds issue at Extraction drill site near Erie, notifies health dept. for ‘air quality matter’”) These Exhibits are admitted.
- Extraction’s Motion in Limine is granted as to Exhibit H, Exhibit N, Exhibit O, the news article in Exhibit Q titled “State finds issue at Extraction drill site near Erie, notifies health dept. for ‘air quality matter,’” Exhibit R, and Exhibit S. These Exhibits and the news article in Exhibit Q are stricken.
- Extraction’s Motion in Limine regarding the testimony of Ann Marie Byers is denied. Ann Marie Byers is permitted to testify.
- Wildgrass’s motion to exclude Extraction’s Exhibits 15-20 is denied. Exhibits 15-20 are admitted.

- Wildgrass's motion to exclude all reference to Texas regulations is denied. Extraction is not prohibited from introducing evidence regarding what Texas is doing on legislation or rulemaking, or how Texas regulations or the industry affects its residents.
- Wildgrass's objection to Extraction calling two expert witnesses to testify on the same matter is overruled. Extraction may call both expert witnesses.
- Wildgrass's objection to any evidence pertaining to 1) the Denver District Court case in which Wildgrass is challenging the approval of drilling permits or 2) the spacing unit hearing or associated protests is overruled. Extraction may present evidence regarding 1) the Denver District Court case in which Wildgrass is challenging the approval of drilling permits, and 2) the spacing unit hearing or associated protests.
- Wildgrass's objection to the documents in "the 'subcommittee documents' folder," *i.e.* Exhibit 27 is denied as moot. Extraction has withdrawn Exhibit 27.
- Wildgrass's objection to Extraction's use of any exhibit proffered by Noble or Mallard is denied as moot. Extraction affirmed that the reference to Noble and Mallard exhibits was a typographical error and that it will not be introducing any Noble or Mallard exhibits.

II. Final Stipulated Facts

The Stipulated Facts agreed to by the Parties are accepted by the Hearing Officer and incorporated herein. The Parties reserve the right to present at Hearing additional facts that remain in dispute and/or that are not included in the Stipulated Facts herein.

The Final Stipulated Facts are as follows:

1. Extraction is a corporation duly authorized to conduct business in the State of Colorado and is a registered operator in good standing with the Commission.
2. Extraction is an Owner as defined by the Colorado Oil and Gas Conservation Act and the Commission's 100 Series Rules and owns certain leasehold interests and/or the right to drill and produce within the Application Lands.
3. WOGC is a non-profit corporation organized under the laws of Colorado and registered with the Colorado Secretary of State as of 2016, and represents many unleased mineral owners in the Wildgrass neighborhood in Broomfield, Colorado.
4. ACT is a non-profit corporation organized under the laws of Colorado and is an Owner as defined by the Colorado Oil and Gas Conservation Act and the Commission's 100 Series Rules and owns unleased minerals within the Application Lands.
5. 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 ("Application Lands"),

with up to twenty (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

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

7. On October 6, 2017, Wildgrass Master Association filed a protest to Docket No. 171000749.

8. On October 10, 2017, WOGC filed a protest to Extraction's application in Docket No. 171000749.

9. On October 24, 2017, Extraction and the City and County of Broomfield executed the Amended and Restated Oil and Gas Operator Agreement.

10. On October 31, 2017, the Commission continued Docket Nos. 170900598 and 171000749 to the December 11-12, 2017 hearing.

11. On December 1, 2017, WOGC and Wildgrass Master Association withdrew their Protests to Docket Nos. 170900598 and 171000749.

12. On December 11, 2017, the Commission entered Order Nos. 407-2256 and 2274, which established the approximate 1,600-acre drilling and spacing unit for the Application Lands.

13. Disputed statements of the parties:

Extraction states that on January 26, 2018, Extraction mailed lease offers to the unleased mineral owners in the Application Lands including the owners in the Wildgrass neighborhood.

Wildgrass states that on or about January 26, 2018, at least some of the unleased mineral owners in the Application Lands received lease offers.

Extraction states that on May 7, 2018, Extraction mailed a second lease offer to the unleased mineral owners in the Application Lands including the owners in the Wildgrass neighborhood.

Wildgrass states that on or about May 7, 2018, Extraction mailed a second lease offer to at least some of the unleased mineral owners in the Application Lands including the owners in the Wildgrass neighborhood.

14. 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

15. 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”).

16. Disputed statements of the parties:

Extraction states that on July 7, 2018, Extraction mailed the first of two well elections with AFEs to the unleased mineral owners and working interest owners in the Application Lands. In the elections to the unleased mineral owners, Extraction re-offered its lease terms from May 7, 2018.

Wildgrass states that on or about July 7, 2018, Extraction mailed the first of two well elections with AFEs to *at least some of* the unleased mineral owners and working interest owners in the Application Lands.

17. On July 6, 2018, WOGC filed a Complaint against the Commission in Denver District Court in Case No. 2018CV32513, appealing the Commission’s approval of the Livingston Form 2A and Form2s.

18. On August 1, 2018, pursuant to the oral order at the October 31, 2017 hearing, the Commission held a Form 2A review hearing for the Extraction locations nearest Adams County at which time the Commission found that the Extraction locations did not pose a risk to public health, safety, and welfare and environment.

19. Disputed statements of the parties:

Extraction states that on August 27, 2018, Extraction mailed the second of two well elections with AFEs to the unleased mineral owners and working interest owners in the Application Lands. In the elections to the unleased mineral owners, it again

re-offered its lease terms from May 7, 2018, giving the owners 60 days to respond to the well elections and offer to lease.

Wildgrass states that on or about August 27, 2018, Extraction mailed the second of two well elections with AFEs to at least some the unleased mineral owners and working interest owners in the Application Lands.

20. On August 30, 2018, Extraction filed its application to pool all interests in the Application Lands for development and operation of the Niobrara and Codell Formations, to obtain cost-recovery against the nonconsenting owners in the Livingston Wells, and have the order be made effective as of the date of the application, or the date that the costs specified in Section 34-60-116(7)(b)(II), C.R.S., are first incurred for the drilling of the Livingston Wells.

21. On October 15, 2018, WOGC and ACT filed their Protest to the Application.

22. On October 15, 2018, Mr. Brian and Ms. Tiffany Kilcoyne filed a protest to the Application.

23. On October 15, 2018, Adams 12 Five Star Schools filed a protest to the Application.

24. On October 15, 2018, the hearing officer continued the Application to the December 11–12, 2018 hearing.

25. On December 11, 2018, the hearing officer continued the Application to the January 28–29, 2019 hearing.

26. On January 18, 2019, the hearing officer continued the Application to the March 11–12, 2019 hearing.

27. On January 23, 2019, WOGC filed a Complaint against the Commission in United States District Court for the District of Colorado in Case No. 1:19-cv-00190, challenging the constitutionality of the Colorado pooling statute on both a facial and an as-applied basis and based on allegations, among others, regarding the Application Lands including public health, safety, and welfare and environment concerns, whether all Owners received notices and reasonable lease offers, and the economics of the project, (the “Federal Court Action”). The Federal Court Action remains pending.

28. On February 6, 2019, Adams 12 Five Star Schools withdrew its protest to the Application.

29. On February 12, 2019, in the Federal Action, Judge Jackson issued an order that the Application shall be heard at the March 11–12, 2019 Commission hearing.

30. On February 26, 2019, WOGC and the Commission filed an Expedited

Request for Clarification in the Federal Action to clarify Judge Jackson's February 12, 2019 Order.

31. On February 27, 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.

32. As of the date of this filing, the matter has not been resolved.

III. Remaining Disputed Issues

Extraction's Remaining Issues:

1. *Whether Extraction tendered reasonable offers to lease all Owners as required by Commission Rule 530 and Section 34-60-116, C.R.S.*

2. *Whether Extraction tendered offers to participate in the Livingston Wells with the information required by Commission Rule 530 and Section 34-60-116, C.R.S.*

3. *Whether WOGC and ACT have standing under the Conservation Act and Rule 530 to raise issues in a statutory pooling hearing related to public health, safety, and welfare and environment and economics as to an operator's financial viability and/or well economics.*

4. *Whether it is appropriate for the Commission to consider issues related to public health, safety, and welfare and environment in a pooling hearing pursuant to Section 34-60-116, C.R.S., and Rule 530, and if so, whether Extraction's Application satisfies the Oil and Gas Conservation Act, which requires the Commission to foster responsible, balanced development, production, and utilization of the natural resources of oil and gas in the state of Colorado in a manner consistent with protection of public health, safety, and welfare and environment.*

Wildgrass' Remaining Disputed Issues:

1. *Whether the COGCC has jurisdiction to hear a matter on pooling of non-migratory minerals.*

The Colorado Oil and Gas Conservation Act is premised on the rule of capture, which only applies to migratory minerals. PHILIP BARBER, 1B COLO. PRAC., METHODS OF PRACTICE (7TH ED.), THE ORIGINS OF OIL AND GAS CONSERVATION STATUTES § 14:3 (2018). Legal authority from across the nation supports that the rule of capture does not apply to hydraulic fracturing of non-migratory minerals. In *Murphy Exploration & Prod. Co. v. Adams*, 560 S.W.3d 105, 111 (Texas 2018), the Texas Supreme Court, citing a growing body of legal authority, concluded that shale fractured by hydraulic fracturing is not “susceptible to migration”. In *Briggs v. Southwestern Energy Prod. Co.*, 184 A.3d 153 (Pa. Super. Ct. 2018), the Superior Court of Pennsylvania held that the rule of capture did not insulate an oil and gas operator from trespass for hydraulically fracturing minerals from a nonconsenting owner. *Id.* at 162–63. In its examination, the Pennsylvania court noted that hydraulic fracturing involves an artificial breaking apart of minerals that otherwise would not migrate anywhere but for the fracturing. *Id.* at 163. Likewise, the Eighth Circuit held that where mineral extraction does not involve “seepage or drainage”, but rather targeted extraction, it would be “unwise” to apply the law of capture, noting that “the common rule of capture is not a license to plunder.” *Young v. Ethyl Corp.*, 521 F.2d 777, 774 (8th Cir. 1975). In *Gawenis v. Arkansas Oil & Gas Comm’n*, 464 S.W.3d 453, 458-59 (Ark. 2015) (J. Hart dissenting) (“the law should not ‘permit those persons who are in an economically advantaged posture to be able to gain negotiating clout by being allowed to undertake, with impunity, processes that go beyond extracting transient minerals or [gases] which have drained or flowed by natural process to their drilling sites.’”), citing *Young*, 609 S.W.2d at 626.

2. *Should the COGCC hold that it has jurisdiction over the pooling of non-migratory minerals, then is the COGCC ruling ultra vires?*

3. *Whether Extraction met its burden of proof to establish that it should be granted involuntary pooling of Plaintiff’s members, including all regulatory and statutory burdens required for involuntary confiscation and development of private non-renewable mineral resources and involuntary contract formation.*

6 Party Exhibits

All of the following exhibits, which have been remarked and renumbered for the hearing, are deemed authentic and admitted before the Commission. The Parties reserve the right at Hearing to present additional exhibits that remain in dispute.

Extraction’s Exhibits:

EXHIBIT NO.	DESCRIPTION
1	XOG Lease Offers & Well Proposals
2	XOG AFEs
3	XOG Lease Schedule & Tracker
4	XOG Lease
5	Form 2A – Livingston – Approved
6	Form 2A with Comments

7	XOG Response to Public Comments
8	COGCC Staff Response to Public Comments
9	Form 2 APDs
10	Amended and Restated Operator Agreement
11	Comprehensive Drilling Plan
12	HAZID Report
13	Updated Well economics
14	XOG 10-K
15	Wildgrass Master Association Protest – Docket No. 170900598
16	WOGC Protest - Docket No. 171000749
17	WOGC Withdrawal with Prejudice
18	WOGC Amended Complaint – Denver District Court
19	WOGC Complaint – U.S. District Court
20	Order No. 1-211 Broomfield Form 2-2A Permit Hearing
21	Livingston Sound Studies
22	Requests to XOG and XOG Responses
23	Lowell Information
24	Baseline Water Quality and Presentations
25	Livingston Mitigation Analysis and Presentations
26	CCOB Task Force Materials
27	<i>withdrawn</i>
28	Letter to Extraction – North Metro Fire Rescue
29	Exposures and Health Risks from Volatile Organic Compounds in Communities Located near Oil and Gas Exploration and Production Activities in Colorado
30	Oil Price Breakevens for US Shale Plays and Global Cost Curve
31	WOGC Motion for TRO
	Any other exhibit for impeachment or rebuttal
	Any exhibit identified or used by WOGC or ACT
	Any document submitted by any party or non-party in the above-captioned dockets including all pleadings, exhibits, and Rule 510 Statements
	Any documents and records of the Colorado Oil and Gas Conservation Commission including but not limited to all pleadings in Docket Nos. 170900598, 171000749, and 181000799, Form 2 Applications for Permit to Drill, and Form 2A Oil and Gas Location Assessments and all supporting and related documents.

WOGC's and ACT's Exhibits:

- a. Extraction Financial Documents
- b. Anadarko Financial Documents
- c. Extraction communication with COGCC
- d. Extraction Form 2
- e. Extraction Form 2A
- f. Extraction Response to Public Comments
- g. Operator Agreement and Settlement Agreement and Exhibits
- h.
- i. June 14, 2017 McCartney Engineering, LLC Report

- j. August 2017 Charles Taylor Risk Services Report
- k. Extraction Communication with Adams 12 Regarding Lease
- l. Extraction Communication with High West Resources Regarding Lease
- m. Various Extraction Lease Offers
- n.
- o.
- p. Setback Article Provided by Extraction Regarding Safety
- q. Environmental/Public Health and Safety Reports (subject to Hearing Officer's Order Denying in Part and Granting in Part Extraction's Motion in Limine)
- r.
- s.

7 Party Witnesses

Extraction may call the following witnesses:

Fact Witnesses

1. Jason Rayburn – Senior Staff Landman, Extraction Oil & Gas, Inc., may testify regarding various land matters, including without limitation, Extraction's leasehold interests, relevant agreements concerning the Application Lands including surface use agreements, the proposed surface operations including permitting, communications between the parties, timing of proposed development and other matters related to the claims asserted in these dockets.

2. Eric Christ – Vice President, General Counsel, and Corporate Secretary. Mr. Christ may testify regarding Extraction's financial viability, communications with representatives of the City and County of Broomfield, WOGC, and ACT, relevant agreements concerning the Application Lands including but not limited to the Operator Agreement, the Comprehensive Drilling Plan, and agreements with WOGC. Extraction estimates that 20 minutes may be needed for Mr. Christ's testimony.

Expert Witnesses

1. Neel Duncan – Petroleum Engineer, Integrated Petroleum Technologies, may testify regarding various petroleum engineering matters, including without limitation the efficient and economic development of the reservoir, preventing waste, protection of correlative rights, well count, well performance and economics, drainage calculations, setbacks and supporting analyses.

2. Clay Duke – Petroleum Engineer, Integrated Petroleum Technologies, may testify regarding various petroleum engineering matters, including without limitation the efficient and economic development of the reservoir, preventing waste, protection of correlative rights, well count, well performance and economics, drainage calculations, setbacks and supporting analyses.

3. Chandler Newhall, Senior Project Manager, Extraction Oil & Gas, Inc. Mr. Newhall may testify regarding Extraction's development plans for the Application Lands including the Operator Agreement, the Comprehensive Drilling Plan, work with the City and County of Broomfield Task Force, development impact studies, communications with the City and County of Broomfield and WOGC and ACT representatives, and other matters related to the claims asserted in this docket. Extraction estimates that 45 minutes may be needed for Mr. Newhall's testimony. A copy of Mr. Newhall's resume is enclosed herewith.

4. Joshua R. Carlisle – EHSR Manager, Extraction Oil & Gas, Inc., may testify regarding various development impact studies concerning the proposed operations, matters raised by WOGC and ACT related to public health, safety, and welfare, and other matters related to the claims asserted in these dockets.

Rebuttal Witnesses

1. Dr. Tami McMullin, Ph.D. – Senior Toxicologist, Center for Toxicology & Environmental Health, LLC, may testify on matters including but not limited to public health, risk assessment, air quality, and best management practices employed by oil and gas operators in community locations, to rebut various claims by WOGC regarding adverse impacts to public health, safety, and welfare, and the environment.

2. Ms. Dollis M. Wright – President, Quality Environmental Professional Associates, Inc., may testify on matters including but not limited to setbacks, site-specific best management practices, public health, air quality, and risk assessment, to rebut various claims by WOGC regarding adverse impacts to public health, safety, and welfare, and the environment.

WOGC and ACT may call the following witnesses:

a. Ann Marie Byers: Ms. Byers is a client representative for Wildgrass Oil and Gas Committee and ACT. She has personal knowledge of communications between Extraction and Wildgrass/ACT members, has personal knowledge about documents proffered by Extraction with these members, has information related to Extraction's financial condition, has personally reviewed reports and studies involving health, safety, and welfare concerns. Ms. Byers also testified at the hearing, on behalf of Wildgrass in the federal court case involving forced pooling. Ms. Byers has knowledge related to plaintiff's allegations and defendants' defenses.

b. Jean Lim: Ms. Lim is a member of Wildgrass Oil and Gas Committee. She has knowledge about Extraction's acts involving this forced pooling hearing. She is able to testify about her knowledge about Wildgrass members who received notices from Extraction, the differing offers, whether her offer was fair or reasonable, whether it was explained to her what just and equitable compensation would derive from any lease offer, and any communications she had with Extraction representatives. Ms. Lim will discuss her concerns about health, safety, and welfare concerns, and her concerns about the financial condition of Extraction based on her review of public documents. Ms. Lim has

knowledge related to plaintiff's allegations and defendants' defenses.

c. Mark Lindner: Mr. Lindner is a member of Wildgrass Oil and Gas Committee. He has had direct communications with Extraction and members of the COGCC involving forced pooling. As an attorney, he will discuss the offer made to him, the differing offers, whether his offer was fair or reasonable, whether it was explained to him what just and equitable compensation would derive from any lease offer, whether he believed he had any bargaining power to negotiate any different provisions, and any communications he had with Extraction representatives. He also will be able to discuss his concerns about health, safety, and welfare concerns, and his concerns about the financial condition of Extraction based on his review of public documents. Mr. Lindner testified at the hearing, as a member of Wildgrass, in the federal court case involving forced pooling. Mr. Lindner has knowledge related to plaintiff's allegations and defendants' defenses.

Cross-Examination

Extraction, as Applicant, and WOGC and ACT, as Protestants, will have an opportunity to cross-examine each party's witnesses and may question said witnesses on all allowable matters.

8 Time and Order of Case Presentation

Each Party will have one hour and fifteen minutes for its presentation, including opening argument, case-in-chief, rebuttal, cross-examination, and closing argument. These times do not include Commissioner questions and time spent answering those questions. The Parties should assume that the Commissioners have read the case file and pleadings for this matter.

The Parties have agreed that the case presentation at hearing will proceed pursuant to Commission Rule 528.a., except as modified below:

1. Determination of whether any Commission members have a conflict of interest;
2. Presentation of any prehearing order;
3. Presentation of any motions and disposition of procedural matters;
4. Presentation of any stipulations;
5. Opening statement by Extraction;
6. Opening statement by WOGC/ACT;
7. Presentation of the case-in-chief by Extraction;
8. Presentation by WOGC/ACT;

9. Presentation of statements under Rule 510, if any;
10. Presentation of staff analysis, if requested by the Commission;
11. Rebuttal by Extraction;
12. Rebuttal by WOGC/ACT;
13. Closing statement by Extraction;
14. Closing statement by WOGC/ACT;
15. Upon motion and for good cause shown, the Commission may permit surrebuttal.
16. Closing of the record.

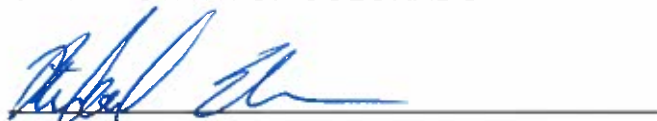
This Final Prehearing Order is binding on the Parties pursuant to Commission Rule 527.k. Any questions concerning this Order or any other aspect of the case may be addressed to the Hearing Officer by email (Michael.eden@state.co.us), with copy to the other Party.

Notwithstanding the above, the Parties are ordered to comply with the applicable Rules and Regulations of the Colorado Oil and Gas Conservation Commission, the State Administrative Procedure Act, and the Rules of Civil Procedure.

IT IS SO ORDERED.

Dated: March 7, 2019

OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO



Michael Eden, Hearing Officer

Colorado Oil and Gas Conservation Commission
1120 Lincoln Street, Suite 801
Denver, Colorado 80203
Website: <http://cogcc.state.co.us>
Phone: (303) 894-2100
Fax: (303) 894-2109

CERTIFICATE OF SERVICE

On March 7, 2019, a true and correct copy of the foregoing Final Prehearing Order was sent by electronic mail to the following:

Joseph C. Pierzchala
Geoffrey W. Storm
jpierzchala@wsmtlaw.com
gstorm@wsmtlaw.com

Attorneys for Extraction Oil & Gas, Inc.

Kate Merlin
Joe Salazar
kate@katemerlinlaw.com
joe@coloradorising.com

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


Michael Eden



INSTRUCTIONS TO ALL INTEREST OWNERS

THIS IS NOT AN OFFER TO PURCHASE OR LEASE YOUR MINERAL RIGHTS.

You are receiving this paperwork because Extraction Oil & Gas is currently producing, or will be in the near future, oil and/or gas from a well(s), in which you have been identified as an interest owner. In order to receive your royalty payments, the enclosed paperwork must be signed and returned.

PLEASE REVIEW, EXECUTE ONE COPY AND RETURN TO OUR OFFICE, AND KEEP ONE COPY FOR YOUR RECORDS. PLEASE DO NOT DETACH THE EXHIBIT FROM THE DIVISION ORDER IF ONE IS INCLUDED.

NOTE: Royalty payments are made at the end of each month when the amount due to you has reached \$100 or more.

The attached document should not be altered in any way except to correct spelling errors, unless accompanied by documentary evidence to support the change.

If your name and interest are correctly shown:

1. Sign your name as shown on the Division Order.
2. If your name has changed due to marriage or divorce, execute the Division Order using your present name and furnish a copy of the marriage certificate or divorce decree.
3. If signing for a corporation, signature must be attested, corporate seal fixed and title of signatory party reflected.
4. If signed by an agent, attorney-in-fact, guardian or any party other than the named interest owner, a certified copy of the power of attorney or other evidence of such party's right to sign must be furnished.
5. Division Orders for partnerships must be executed by all partners or by an authorized partner. A certified copy of the instrument giving said partners authority to sign must be furnished.
6. **Federal law requires that you furnish a correct social security or taxpayer identification number. Failure to comply will result in 28% tax withholding required by the Internal Revenue Service and will not be refunded by Extraction. You may also be subject to a further penalty levied by the Internal Revenue Service.** If your tax identification number is pre-printed on the enclosed Division Order, a W-9 form is not required. If no tax identification number is listed OR the pre-printed tax identification number is incorrect, the closed W-9 form must be completed and returned with your Division Order.
7. If the Division Order contains an incorrect mailing address, your correct mailing address should be noted on the Division Order to insure prompt receipt of production proceeds. Please print the correct mailing address using no abbreviations.
8. The "Return" portion should be returned to:

**EXTRACTION OIL AND GAS, INC.
370 17th Street, Suite 5300
Denver, Colorado 80202
Attn: Division Orders**

**FOR FASTER PROCESSING, PLEASE RETURN YOUR DOCUMENTS VIA EMAIL, TO
DIVISIONORDERS@EXTRACTIONOG.COM**

9. Should you have any further questions regarding the enclosed Division Order, please contact Owner Relations at 1-855-412-6501 or via email at DivisionOrders@ExtractionOG.com.
10. Please visit our website at ExtractionOG.com to learn more about Extraction Oil and Gas.



DIVISION ORDER

To: Extraction Oil and Gas, Inc.
370 17th Street, Suite 5300
Denver, CO 80202

Date: June, 2020

Analyst: T. Peters

Well/Property Name: See Exhibit on Reverse Side
Well API Number: See Exhibit on Reverse Side
Well/Property Number: See Exhibit on Reverse Side
County and State: Broomfield, Colorado
Spacing Unit Gross Acres: See Exhibit on Reverse Side
Spacing Description: See Exhibit on Reverse Side

Production Type: Oil Gas Other

Owner Number	Owner Name & Mailing Address	Tax Identification	Interest Type	Interest Decimal
58817	ANDI SETIYADI AND KLARISSA MARIA 14792 EAGLE RIVER LOOP BROOMFIELD, CO 80023	MUST PROVIDE	FPRI	See Reverse Side

The undersigned certifies the ownership of their decimal interest in production or proceeds as described above payable by Extraction Oil and Gas, Inc. ("Payor").

Payor shall be notified, in writing, of any change in ownership, decimal interest, or payment address. All such changes shall be effective within 60 days of notification from Payee.

Payor is authorized to withhold payment pending resolution of a title dispute or adverse claim asserted regarding the interest in production claimed herein by the undersigned. The undersigned agrees to indemnify, defend and hold harmless and reimburse Payor from and against any and all claims and causes of action of any kind, including attorneys' fees and costs arising from such claims or causes of action, brought by or which may in the future be brought by any person who is or claims to be entitled to assert a claim for any amount attributable to an interest to which the undersigned is not entitled. The undersigned agrees to reimburse Payor any amount attributable to an interest to which the undersigned is not entitled.

Payor may accrue proceeds until the total amount equals \$100.00, or pay annually, whichever occurs first, or as required by applicable state statute.

This Division Order does not amend any lease or operating agreement between the undersigned and the Lessee or operator or any other contracts for the purchase of oil or gas.

In addition to the terms and conditions of this Division Order, the undersigned and Payor may have certain statutory rights under the Laws of the state in which the property is located.

A facsimile or scanned copy of a signed copy of this Division Order shall be deemed an original.

Federal Law requires you to furnish your Social Security or Taxpayer Identification Number.

Owner(s) Signature: _____

Owner(s) Tax I.D. (SSN or EIN): _____

Change of Address Request:

Printed Name: _____

Old Mailing Address:

Printed Name: _____

Phone Number (optional): _____

Printed Name: _____

Email Address (optional): _____

New Mailing Address:

Owner ID: 58817

COPY



NADOA Model Form Division Order (Adapted 2/25)

Well #	Well Name	Well API	Well Spacing	Unit Acres	Pay Code	Decimal Interest
3058	LIVINGSTON S19-25-02C	0501420753				
3059	LIVINGSTON S19-25-03N	0501420758				
3060	LIVINGSTON S19-25-04N	0501420756				
3061	LIVINGSTON S19-25-05C	0501420755				
3062	LIVINGSTON S19-25-06N	0501420747				
3063	LIVINGSTON S19-25-07N	0501420751				
3064	LIVINGSTON S19-25-08C	0501420754	IS, 68W SEC 7: S/2 & SEC 18: ALL & SEC 19: ALL	1561.466	SID	0.00001682
3065	LIVINGSTON S19-25-09N	0501420746				
3066	LIVINGSTON S19-25-10N	0501420748				
3067	LIVINGSTON S19-25-11C	0501420749				
3068	LIVINGSTON S19-25-12N	0501420750				
3069	LIVINGSTON S19-25-13N	0501420752				
3070	LIVINGSTON S19-25-14C	0501420757				

Paycode Legend

- M = Account is current for this well and in PAY status
- SDO = We require this executed Division Order in order to release funds for this well.
- SID = We require this signed Division Order and a W-9 form to release funds for this well.
- ST = Your account is in title suspense and needs resolution before payment can be made.

