IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
EXTRACTION OIL & GAS, INC., *et al.*,[1]	)	Case No. 20-11548 (CSS)
Reorganized Debtors.	)	(Jointly Administered)
	)	**Hearing Date: August 9, 2021 @ 11:00 a.m. (ET)**
	)	**Response Deadline: July 22, 2021 @ 4:00 p.m. (ET)**

REORGANIZED DEBTORS' OBJECTION TO PROOF OF CLAIM NO. 2459 FILED BY WILDGRASS OIL & GAS COMMITTEE

THIS IS AN OBJECTION TO YOUR CLAIM. THE OBJECTING PARTY IS ASKING THE COURT TO DISALLOW THE CLAIM THAT YOU FILED IN THESE BANKRUPTCY CASES. YOU SHOULD IMMEDIATELY CONTACT THE OBJECTING PARTY TO RESOLVE THE DISPUTE. IF YOU DO NOT REACH AN AGREEMENT, YOU MUST FILE A RESPONSE TO THIS OBJECTION AND SEND A COPY OF YOUR RESPONSE TO THE OBJECTING PARTY. YOUR RESPONSE MUST STATE WHY THE OBJECTION IS NOT VALID.

A HEARING WILL BE CONDUCTED ON THIS MATTER ON AUGUST 9, 2021 AT 11:00 A.M. ET.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

The above-captioned reorganized debtors (the "Reorganized Debtors") hereby object to Proof of Claim No. 2459 (the "Proof of Claim") filed by Wildgrass Oil and Gas Committee ("Wildgrass OGC"). A true and correct copy of the Proof of Claim is attached as **Exhibit A**. In support of this objection, the Reorganized Debtors rely upon the declaration of Thomas Behnke attached as **Exhibit B**. In further support, the Reorganized Debtors respectfully represent as follows:

[1] The Reorganized Debtors in these chapter 11 cases, along with the last four digits of each Reorganized Debtor's federal tax identification number, are: Extraction Oil & Gas, Inc. (3923); 7N, LLC (4912); 8 North, LLC (0904); Axis Exploration, LLC (8170); Extraction Finance Corp. (7117); Mountaintop Minerals, LLC (7256); Northwest Corridor Holdings, LLC (9353); Table Mountain Resources, LLC (5070); XOG Services, LLC (6915); and XTR Midstream, LLC (5624). The location of the Reorganized Debtors' principal place of business is 370 17th Street, Suite 5300, Denver, Colorado 80202.

PRELIMINARY STATEMENT

1. In the Proof of Claim, Wildgrass OGC asserted as the basis of the claim "Mineral rights taken" and attached a copy of an amended complaint (the "Amended Complaint") filed in *Wildgrass Oil and Gas Committee v. State of Colorado, et al.*, Case No. 19-00190-RGJ-NYW (the "Colorado Action") filed in the United States District Court for the District of Colorado (the "Colorado District Court").[2] The Colorado Action challenged the constitutionality of C.R.S. § 34-60-116. Colorado Revised Statute § 34-60-116 is a statute that permits pooling of various mineral interests into one large "drilling and spacing unit" in order to drill a single well to drain a large area of oil and gas, with each person who owns a mineral interest in the unit receiving a share of the proceeds. The Proof of Claim should be disallowed and expunged. ***First***, Extraction Oil & Gas, Inc. ("Extraction") was not a party to the Colorado Action and the Colorado Action was dismissed by the Colorado District Court and the dismissal of the procedural due process claim (which was the only claim appealed by Wildgrass OGC) was affirmed by the United States Court of Appeals for the Tenth Circuit (the "Court of Appeals"). ***Second***, Extraction properly obtained approval of the pooling of the mineral interests of the members of Wildgrass under C.R.S. § 34-60-116.

JURISDICTION AND VENUE

2. The United States Bankruptcy Court for the District of Delaware (the "Court") has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. The Reorganized Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules

[2] Wildgrass OGC attached to the Proof of Claim an amended complaint filed in the Colorado Action on April 15, 2019 at Docket No. 54. The amended complaint was filed again in the Colorado Action on April 30, 2019 at Docket No. 65. On information and belief, the amended complaint filed at Docket No. 54 and Docket No. 65 are the same document and the term "Amended Complaint" refers to both amended complaints.

of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Local Rules"), to the entry of a final order by the Court in connection with this objection to the extent it is later determined that the Court, absent party consent, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper under 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 105(a) and 502(b) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), Bankruptcy Rules 3003 and 3007, and Bankruptcy Local Rule 3007-1.

FACTUAL BACKGROUND

I. THE PARTIES

5. Extraction is one of the Reorganized Debtors.

6. Wildgrass OGC, upon information and belief, is a committee formed by residents who are mineral owners in the Wildgrass residential subdivision in Broomfield, Colorado.

II. THE BANKRUPTCY CASES

7. On June 14, 2020 (the "Petition Date"), Extraction and the other Reorganized Debtors filed voluntary petitions for relief under the Bankruptcy Code. *See* Voluntary Petition [Docket No. 1].

8. On December 23, 2020, the Court entered the *Findings of Fact, Conclusions of Law, and Order Confirming the Sixth Amended Joint Plan of Reorganization of Extraction Oil & Gas, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1509] (the "Confirmation Order"), confirming the Debtors' *Sixth Amended Joint Plan*

of Reorganization of Extraction Oil & Gas, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code [Docket No. 1505] (the "Plan").

9. On January 20, 2021, the Debtors substantially consummated the Plan and emerged from chapter 11 in accordance with the terms of the Plan and the Confirmation Order. On January 21, 2021, the Reorganized Debtors filed their *Notice of (A) Entry of Findings of Fact, Conclusions of Law, and Order Confirming the Sixth Joint Plan of Reorganization of Extraction Oil & Gas, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code, and (B) Occurrence of Effective Date* [Docket No. 1652].

III. EXTRACTION'S APPLICATION TO POOL MINERAL INTERSTS PURSUANT TO C.R.S. § 34-60-116

10. Because an underground oil and gas reservoir typically covers a large area encompassing many separately owned tracts of land, Colorado, like most other oil and gas producing states, has a law that allows for the "pooling" (*i.e.*, combining) of separate ownership interests within a drilling and spacing unit for a well in furtherance of oil and gas production. That statute is C.R.S. § 34-60-116 (the "Act").

11. Pursuant to the Act, operators like Extraction may apply to Colorado's oil and gas regulators, the Colorado Oil and Gas Conservation (the "COGCC"), to establish drilling and spacing units and to pool the interest of mineral owners within those units.

12. Pursuant to the Act, if the owners of mineral interests within the drilling and spacing unit do not want to participate in the well, then operators like Extraction may apply to the COGCC for permission to "force pool" the non-consenting mineral owners.

13. The COGCC can force the non-consenting owners to include their mineral interests in the drilling and spacing unit and be part of the well, as long as the operator has made a "just and

reasonable" offer to the mineral interest owners. The COGCC has authority to determine what constitutes a just and reasonable offer.

14. Pursuant to the Act, the COGCC must provide notice and a hearing before issuing a forced pooling order. Once an operator is granted authority to force pool, mineral owners who do not lease their mineral rights to the operator are considered non-consenting and subject to forced pooling. When a well is drilled, the Act provides for how the costs for, and proceeds from, the operation are to be allocated among the consenting and non-consenting parties.

15. Prior to the Petition Date, Extraction's application to drill horizontal wells in Broomfield, Colorado went through the statutory pooling process. Pursuant to the Act and the related COGCC rules, among other things, Extraction filed applications to pool drilling and spacing units for proposed oil and gas development in Broomfield. Extraction sent pooling election letters to, among others, the Wildgrass OGC members and filed an application with the COGCC to pool the mineral interests owned by the Wildgrass OGC members. Pursuant to the Act and related COGCC rules, the Wildgrass OGC members objected to Extraction's pooling application. On March 12, 2019 the COGCC held a hearing on Extraction's pooling application and Wildgrass OGC's objection and after such hearing the COGCC granted Extraction's application.

IV. THE COLORADO ACTION

16. On January 23, 2019, Wildgrass OGC filed a complaint for a temporary restraining order and injunction in the Colorado District Court, arguing that the Act was unconstitutional. The complaint sought to enjoin the COGCC from enforcing the Act and the related COGCC rules and a declaratory judgment declaring the statute unconstitutional. Extraction was not named as a party in the complaint.

17. On April 30, 2019, Wildgrass OGC filed an Amended Complaint dropping the claim that the Act violated the Privilege and Immunities Clause and raising additional procedural due process claims. Again, Extraction was not named as a party in the Amended Complaint

18. On March 18, 2020, the Colorado District Court granted motions to dismiss the Amended Complaint filed by the defendants and dismissed the Amended Complaint with prejudice. A true and correct copy of the Colorado District Court's Order is attached hereto as **Exhibit C**.

19. On April 17, 2020, Wildgrass appealed the dismissal of the Amended Complaint. On appeal, Wildgrass OGC only contested the Colorado District Court's dismissal of the federal procedural due process claim.

20. On February 1, 2021, the Court of Appeals affirmed the Colorado District Court's dismissal of the federal procedural due process claim. A true and correct copy of the Order and Judgment is attached hereto as **Exhibit D**.

RELIEF REQUESTED

21. The Reorganized Debtors request that the Court enter the Proposed Order attached as **Exhibit E**, (i) sustaining the objection to the Proof of Claim, (ii) disallowing and expunging the Proof of Claim for all purposes, and (iii) authorizing the Reorganized Debtors' Court-appointed claims and noticing agent to reflect the disallowance and expungement of the Proof of Claim on the official Claims Register.

BASIS FOR OBJECTION

22. Wildgrass OGC's Proof of Claim should be disallowed and expunged because Extraction was not a party to the Colorado Action and such action has been dismissed with

prejudice and Extraction's pooling of the Wildgrass members' mineral interests was properly applied for and approved under C.R.S. § 34-60-116.

I. LEGAL STANDARD

23. "Not all claims have equal merit; neither will the filing of a proof of claim automatically result in payment of that claim from the estate." *Torres v. Asset Acceptance, LLC*, 96 F. Supp. 3d 541, 544 (E.D. Pa. 2015). Instead, once "a proof of claim has been filed, the court must determine whether the claim is 'allowed' under [section] 502(a) of the Bankruptcy Code." *Id.* (quoting *Travelers Cas. & Sur. Co. of Am. v. Pac. Gas & Elec. Co.*, 549 U.S. 443, 449 (2007)). "Upon objection, the bankruptcy court decides whether to allow or disallow the claim." *Id.* "One reason for disallowance is that 'such claim is unenforceable against the debtor . . . under any agreement or applicable law." *Id.* (quoting 11 U.S.C. § 502(b)(1)).

II. THE COLORADO ACION HAS BEEN DISMISSED

24. The Colorado Action has been dismissed with prejudice by the Colorado District Court and the Court of Appeals affirmed the dismissal of the procedural due process claim.

25. Wildgrass OGC has not further appealed the dismissal of the Colorado Action and such dismissal is a final judgement.

26. Because the Colorado Action has been dismissed and the Wildgrass OGC has exhausted its appellate remedies, the Wildgrass OGC's Proof of Claim should be disallowed and expunged.

III. THE REORGANIZED DEBTORS HAVE NO LIABILITY FOR "MINERAL RIGHTS TAKEN" BECAUSE POOLING OF THE WILDGRASS OGC MEMBERS WAS APPROVED UNDER C.R.S. § 34-60-116

27. Extraction filed an application with the COGCC to approve the pooling of the mineral interests of, among others, the members of Wildgrass OGC pursuant to § 34-60-116 and related rules of the COGCC.

28. Wildgrass OGC objected to Extraction's pooling application and the COGCC set a hearing on Extraction's pooling application.

29. On March 12, the COGCC held a hearing on Extraction's pooling application at which Wildgrass OGC participated.

30. At such hearing, the COGCC approved Extraction's pooling application pursuant to § 34-60-116 and related rules of the COGCC and authorized Extraction to force pool the mineral interests of the members of Wildgrass OGC.

31. Because Extraction is authorized to force pool the mineral interests of the members of the Wildgrass OGC, the members of Wildgrass OGC have received, and will continue to receive, royalties pursuant to the Act, the rules of the COGCC and any applicable agreement with Extraction. To the extent that the Wildgrass OGC Proof of Claim is allowed, the Wildgrass OGC will receive a double recovery on account of its mineral interests. The Court, therefore, should disallow and expunge the Proof of Claim.

RESERVATION OF RIGHTS

32. The Reorganized Debtors expressly reserve the right to amend, modify, or supplement this Objection, and to file additional objections to the Proof of Claim upon response from Wildgrass OGC or any other interested party or at any other time. Should one or more of the grounds for this Objection be dismissed or overruled, the Reorganized Debtors reserve the right to object to the Proof of Claim on any other ground.

33. Nothing contained in this Objection or any actions taken by the Reorganized Debtors is intended or should be construed as: (a) an admission as to the validity, priority, or amount of the Proof of Claim; (b) a waiver of the Reorganized Debtors' right to dispute the Proof of Claim on any grounds; (c) a promise or requirement to pay the Proof of Claim; (d) a request or

authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (e) a waiver or limitation of the Reorganized Debtors' rights under the Confirmation Order or the Plan; (f) a waiver or limitation of the Reorganized Debtors' rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Reorganized Debtors or any other party-in-interest that any liens (contractual, common law, statutory, or otherwise) are valid and the Reorganized Debtors and all other parties-in-interest expressly reserve their rights to contest the extent, validity, or perfection, or to seek avoidance of all such liens.

NOTICE

34. Notice of the hearing on the relief requested in this objection will be provided by the Reorganized Debtors in accordance and compliance with Bankruptcy Rules 4001 and 9014, as well as the Bankruptcy Local Rules, and is sufficient under the circumstances. Without limiting the foregoing, due notice will be afforded, by first class mail to parties-in-interest, including: (a) counsel for Wildgrass OGC; (b) the U.S. Trustee for the District of Delaware; (c) the administrative agent under the Reorganized Debtors' prepetition senior credit facility or, in lieu thereof, counsel thereto; (d) the lenders under the Reorganized Debtors' prepetition senior credit facility or, in lieu thereof, counsel thereto; (e) the indenture trustee for the Reorganized Debtors' prepetition senior notes or, in lieu thereof, counsel thereto; (f) the holders of the Reorganized Debtors' prepetition senior notes or, in lieu thereof, counsel thereto; (g) the ad hoc group of holders of the Reorganized Debtors' preferred equity or, in lieu thereof, counsel thereto; (h) the United States Attorney's Office for the District of Delaware; (i) the Internal Revenue Service; (j) the United States Securities and Exchange Commission; (k) the state attorneys general for states in which the Reorganized Debtors conduct business; and (l) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Reorganized Debtors believe, in light of the relief requested, no other or further notice is needed.

CONCLUSION

35. Wildgrass OGC's claim is barred because of the Colorado Action has been dismissed with prejudice and because the forced pooling of the mineral interests of the members of the Wildgrass OGC has been authorized by the COGCC pursuant to the Act and the related rules of the COGCC. For the reasons stated, the Reorganized Debtors respectfully request that the Court disallow and expunge the Proof of Claim.

Dated: July 8, 2021
Wilmington, Delaware

/s/ Stephen B. Gerald

WHITEFORD, TAYLOR & PRESTON LLC[3]
Marc R. Abrams (DE No. 955)
Richard W. Riley (DE No. 4052)
Stephen B. Gerald (DE No. 5857)
The Renaissance Centre
405 North King Street, Suite 500
Wilmington, Delaware 19801
Telephone: (302) 353-4144
Facsimile: (302) 661-7950
Email: mabrams@wtplaw.com
rriley@wtplaw.com
sgerald@wtplaw.com

Co-Counsel to Reorganized Debtors

[3] Whiteford, Taylor & Preston LLC operates as Whiteford Taylor & Preston L.L.P. in jurisdictions outside of Delaware.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
EXTRACTION OIL & GAS, INC., *et al.*,[1]	)	Case No. 20-11548 (CSS)
Reorganized Debtors.	)	(Jointly Administered)
	)	**Hearing Date: August 9, 2021 @ 11:00 a.m. (ET)**
	)	**Response Deadline: July 22, 2021 @ 4:00 p.m. (ET)**

NOTICE OF REORGANIZED DEBTORS' OBJECTION
TO PROOF OF CLAIM NO. 2459 FILED BY WILDGRASS OIL AND GAS COMMITTEE

TO: Wildgrass Oil & Gas Committee
c/o Colorado Rising for Communities
Attention: Joseph A. Salazar
P.O. Box 370
Eastlake, CO 80614-0370
joe@corising.org

PLEASE TAKE NOTICE that the Reorganized Debtors have filed the **Reorganized Debtors' Objection to Proof of Claim No. 2459 Filed by Wildgrass Oil and Gas Committee** (the "Objection") with the United States Bankruptcy Court for the District of Delaware (the "Court"). The Objection seeks to alter your rights by disallowing and expunging your claim.

PLEASE TAKE FURTHER NOTICE that you are required to file a response to the Objection on or before **July 22, 2021 at 4:00 p.m. (ET)** with the Clerk of the Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801. At the same time, you must also serve a copy of the response upon the undersigned counsel for the Reorganized Debtors.

PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED BY THE OBJECTION WITHOUT FURTHER NOTICE OR HEARING.

PLEASE TAKE FURTHER NOTICE, IF A RESPONSE IS FILED, A HEARING (THE "HEARING") ON THE OBJECTION WILL BE HELD ON **AUGUST 9, 2021 AT 11:00 A.M.**

---

[1] The Reorganized Debtors in these chapter 11 cases, along with the last four digits of each Reorganized Debtor's federal tax identification number, are: Extraction Oil & Gas, Inc. (3923); 7N, LLC (4912); 8 North, LLC (0904); Axis Exploration, LLC (8170); Extraction Finance Corp. (7117); Mountaintop Minerals, LLC (7256); Northwest Corridor Holdings, LLC (9353); Table Mountain Resources, LLC (5070); XOG Services, LLC (6915); and XTR Midstream, LLC (5624). The location of the Reorganized Debtors' principal place of business is 370 17th Street, Suite 5300, Denver, Colorado 80202.

(ET) BEFORE THE HONORABLE CHRISTOPHER S. SONTCHI, UNITED STATES BANKRUPTCY JUDGE, UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 NORTH MARKET STREET, 5TH FLOOR, COURTROOM NO. 6, WILMINGTON, DELAWARE 19801.

PLEASE TAKE FURTHER NOTICE THAT IF YOU FILE A RESPONSE TO THE OBJECTION, YOU SHOULD BE PREPARED TO ARGUE THAT RESPONSE AT THE HEARING. YOU NEED NOT APPEAR AT THE HEARING IF YOU DO NOT OBJECT TO THE RELIEF REQUESTED.

PLEASE TAKE FURTHER NOTICE THAT THE HEARING MAY BE CONTINUED FROM TIME TO TIME UPON WRITTEN NOTICE TO YOU OR AS DECLARED ORALLY AT THE HEARING.

Dated: July 8, 2021
Wilmington, Delaware

/s/ Stephen B. Gerald

WHITEFORD, TAYLOR & PRESTON LLC[2]
Marc R. Abrams (DE No. 955)
Richard W. Riley (DE No. 4052)
Stephen B. Gerald (DE No. 5857)
The Renaissance Centre
405 North King Street, Suite 500
Wilmington, Delaware 19801
Telephone: (302) 353-4144
Facsimile: (302) 661-7950
Email: mabrams@wtplaw.com
rriley@wtplaw.com
sgerald@wtplaw.com

Co-Counsel to Reorganized Debtors

[2] Whiteford, Taylor & Preston LLC operates as Whiteford Taylor & Preston L.L.P. in jurisdictions outside of Delaware.

EXHIBIT A

(Proof of Claim)

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?

WILDGRASS OIL AND GAS COMMITTEE
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?

☑ No
☐ Yes. From whom?

3. Where should notices and payments to the creditor be sent?

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
WILDGRASS OIL AND GAS COMMITTEE C/O COLORADO RISING FOR COMMUNITIES ATTENTION JOSEPH A. SALAZAR PO BOX 370 EASTLAKE, CO 80614-0370	
Contact phone	Contact phone
Contact email joe@corising.org	Contact email

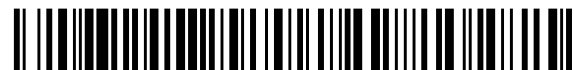
Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. Does this claim amend one already filed?

☑ No
☐ 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?

☐ No
☑ 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?

- [x] 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?

$ 10,000,000+ . **Does this amount include interest or other charges?**

- [x] 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.

Mineral rights taken.

9. Is all or part of the claim secured?

- [x] 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: ______________________

Basis for perfection: ______________________

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: $__________

Amount of the claim that is secured: $__________

Amount of the claim that is unsecured: $__________(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: $__________

Annual Interest Rate (when case was filed)________%

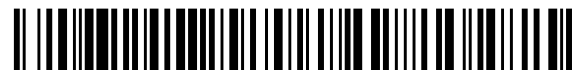
- [ ] Fixed
- [ ] Variable

10. Is this claim based on a lease?

- [ ] No
- [x] Yes. **Amount necessary to cure any default as of the date of the petition.** $10,000,000

11. Is this claim subject to a right of setoff?

- [x] 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
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$__________
☐ 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).	$__________
☐ 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).	$__________
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$__________
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$__________
☐ 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 09/18/2020 (MM / DD / YYYY)

/s/Joseph A. Salazar
Signature

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

Name: Joseph A. Salazar (First name / Middle name / Last name)

Title: Attorney

Company: Colorado Rising on behalf of Wildgrass Oil and Gas Committee
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone __________ Email __________

2011548200726084227035213

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:
WILDGRASS OIL AND GAS COMMITTEE
C/O COLORADO RISING FOR COMMUNITIES
ATTENTION JOSEPH A. SALAZAR
PO BOX 370
EASTLAKE, CO, 80614-0370

Phone:

Phone 2:

Fax:

Email:
joe@corising.org

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded

Related Document Statement:

Has Related Claim:
Yes

Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No

Acquired Claim:
No

Basis of Claim:
Mineral rights taken.

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
10,000,000+

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Amount of 503(b)(9):
No

Based on Lease:
Yes, 10,000,000

Subject to Right of Setoff:
No

Nature of Secured Amount:

Value of Property:

Annual Interest Rate:

Arrearage Amount:

Basis for Perfection:

Amount Unsecured:

Submitted By:
Joseph A. Salazar on 18-Sep-2020 4:58:22 p.m. Eastern Time

Title:
Attorney

Company:
Colorado Rising on behalf of Wildgrass Oil and Gas Committee

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.

WILDGRASS OIL AND GAS COMMITTEE,

Plaintiff

v.

STATE OF COLORADO; JARED S. POLIS, in his official capacity as Governor of the State of Colorado; COLORADO OIL AND GAS CONSERVATION COMMISSION; and JEFFREY ROBBINS, in his official capacity as Director of the Colorado Oil and Gas Conservation Commission,

Defendants

AMERICAN PETROLEUM INSTITUTE and COLORADO OIL AND GAS ASSOCIATION,

Intervenors.

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff WILDGRASS OIL AND GAS COMMITTEE brings this action against defendants STATE OF COLORADO (the "State"); JARED S. POLIS, in his official capacity as Governor of the State of Colorado (the "Governor"); COLORADO OIL AND GAS CONSERVATION COMMISSION ("COGCC"); and JEFFREY ROBBINS (the "Director"), in his official capacity as Director of the Colorado Oil and Gas Conservation Commission; and in support of its claims states as follows:

NATURE OF THE ACTION

1. This case challenges the Constitutionality of C.R.S. §34-60-116 (the "Act"), facially and as applied, which allows the COGCC to provide private companies access to Colorado residents' minerals without the owner's consent, and even when the mineral owner objects.

2. After sustained participation in COGCC administrative processes and proceedings over countless hours spanning almost two years, Plaintiff's members who own minerals ("Wildgrass Owners") received an election letter requiring that they either elect to voluntarily participate in the large-scale residential fracking project planned by Extraction Oil and Gas for their neighborhoods or have their minerals pooled into the project and suffer a hefty penalty despite their myriad objections to the residential fracking project.

3. In reliance on the Act, and the rules promulgated by the COGCC (the "COGCC Rules"), the COGCC and the Director consistently "rubber-stamp" requests by private corporations for orders granting them access to the minerals of non-consenting mineral owners and penalizing non-consenting owners in violation of the United States Constitution.

4. The Act, on its face, and as applied by Defendants:

a. Allows the COGCC to not only access the non-consenting owners' minerals, but does so for the benefit of a private corporation, and without protection of the mineral owners' substantive and procedural due process rights.

b. Interferes with Wildgrass Owners' right to protect their property, and allows for unlawful trespass.

c. Interferes with Plaintiff members' constitutional right to freedom of association.

d. Impairs the constitutional right to contract.

5. The continued implementation and enforcement of the Act constitutes an imminent and ongoing threat by the State of Colorado, acting by and through Defendant Jeffrey Robbins as Director of the COGCC.

6. The Wildgrass Owners are entitled to declaratory and injunctive relief holding that the Act is unconstitutional and enjoining Defendants from enforcing the Act.

JURISDICTION AND VENUE

7. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3) because the matter in controversy arises under the laws and Constitution of the United States, including, but not limited to, the Fourteenth Amendment to the United States Constitution and 42 U.S.C.§ 1983. Plaintiff seeks injunctive and declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.

8. This action is brought pursuant to the First and Fourteenth Amendments to the United States Constitution, and 42 U.S.C. § 1983 for declaratory and injunctive relief, for the purpose of protecting the due process and associational rights of members.

9. Venue rests properly in the United States District Court for the District of Colorado pursuant to 28 U.S.C. § 1391(b) both because all Defendants reside in the State of Colorado and because all events giving rise to the claims herein occurred in Colorado.

10. The Eleventh Amendment to the United States Constitution does not deprive this Court of jurisdiction because only injunctive and declaratory relief is sought.

PARTIES

A. Plaintiff

11. The Wildgrass Oil and Gas Committee ("Wildgrass OGC") members include mineral owners in the Wildgrass subdivision in Broomfield, Colorado which is one of the neighborhoods affected by the pending oil and gas operations described herein. As such, the

Wildgrass Owners filed protests in accordance with the COGCC rules and regulations. The Wildgrass OGC is an independent organization which assists its members as they attempt to ensure that gas and oil development in their community is done responsibly consistent with applicable rules, regulations, laws, court decisions, and citizen's rights under the State and Federal constitutions.

B. Defendants

12. Defendant COGCC is the state agency responsible for administering the Act and for the protection of the health, safety and welfare of the people of Colorado from the health and safety risks of oil and gas operations, including risks to the environment and wildlife resources, in the Commission's implementation and enforcement of the Act.

13. Defendant Jared S. Polis is the Governor of the State of Colorado, and is required by the Colorado Constitution to ensure that all laws of the state are faithfully executed. COLO. CONST. ART. IV § 2. As Colorado's Chief Executive, the Governor is the proper defendant to actions to enjoin or invalidate the application of the Act. *Developmental Pathways v. Ritter*, 178 P.3d 524, 529 (Colo. 2008).

14. Defendant Jeffrey Robbins is the Director of the COGCC, and in that official capacity, he is responsible for the implementation and enforcement of the Act, which is accomplished largely through the COGCC Rules. As described herein, Defendant Robbins is responsible for the administration, regulation, and enforcement of the Colorado Oil and Gas Conservation Act. Defendant Robbins is sued in his official capacity.

15. The State of Colorado, operating through legislative action, adopted and revised the Drilling Units-Pooling Interests section of the Act. C.R.S. §34-60-116. The statutory mandates in the Act are forbidden by the U.S. Constitution.

PROCEDURAL POSTURE, BACKGROUND, AND FACTUAL ALLEGATIONS

A. The Rule of Capture

16. Under the Rule of Capture, a lessee under an oil and gas lease acquires title to the oil and gas that it produces from wells drilled on property it has rights to access, even though part of the minerals have migrated from beneath adjoining or nearby properties where it does not have such rights.

17. The premise is based upon the fact that transient oil and gas have the power and the tendency to escape across property lines without any action or consent by the owner, and the Rule of Capture treated such transient minerals as one's property only when captured.

18. Hydraulic fracturing, however, especially when horizontal drilling is employed, is distinguishable from the conventional methods of oil and gas extraction that gave rise to the Rule of Capture.

19. Hydraulic fracturing is a well stimulation technique in which non-transient rock is fractured by a pressurized liquid. The process involves the high-pressure injection of 'fracking fluid' (primarily water, containing sand or other proppants suspended with the aid of thickening

agents) into a wellbore to create cracks in the deep-rock formations through which natural gas, petroleum, and brine will flow. When the hydraulic pressure is removed from the well, small grains of hydraulic fracturing proppants (usually either sand or aluminum oxide) hold the fractures open.

20. The Rule of Capture assumes that oil and gas originate in subsurface reservoirs or pools, and can migrate freely within the reservoir and across property lines, according to changes in pressure. Modern day horizontal hydraulic fracturing, however, differs dramatically from conventional gas drilling, in that it accesses oil and natural gas that is trapped in the rock formations, *i.e.,* is non-migratory in nature and specific tracts must be specifically targeted for extraction.

21. Put another way, the product does not merely escape to adjoining land absent the application of an external force. Instead, the shale must be fractured through the process of hydraulic fracturing; only then does the oil and natural gas contained in the rock formations move through the artificially created channels.

22. Another distinction from conventional drilling is that current technologies allow an operator to drill at least two miles horizontally in any direction from the well pad, which allows the operator to purposely target the minerals of others, including those that do not consent to having their minerals extracted.

23. The Rule of Capture has not been modified in the State of Colorado to include the hydraulic fracturing of non-transitory minerals, such as those minerals targeted by hydraulic fracturing.

B. The Act

24. The Colorado General Assembly has adopted legislation that modifies the rule of capture in the Act via sections C.R.S. §34–60–101 *et seq*. to create "spacing" rules that limit the number of wells that can be drilled in a specific tract of land.

25. These spacing rules were deemed necessary only because courts had stated that the remedy for property owners who objected to others "capturing" the oil and gas pooled beneath their land was to drill their own well and "capture" the oil and gas themselves. This byproduct of the Rule of Capture led to massive over drilling of wells.

26. Along with the spacing rules, the Act and COGCC Rule 503, the legislature and COGCC have codified a process called "pooling."

27. Pooling occurs when various parcels or interests are combined for purposes of mineral extraction so that costs and revenues are apportioned among the interest holders. C.R.S. § 34–60–116(6). Pooling orders were necessitated by the imposition of spacing rules, which limited the number of wells that could be drilled, as a result of the Rule of Capture. As described herein, the Rule of Capture no longer justifies these spacing and pooling rules when applied to hydraulic fracturing, and the dangers of over drilling of wells is no longer present.

28. Pooling may be voluntary or involuntary under the Act and COGCC Rules.

29. Involuntary, or forced, pooling was deemed useful to avoid "holdouts" who did not want to participate in pooling arrangements, but the oil and gas under their land was going to be drained against their will anyway as a result of the Rule of Capture. As described herein, forced pooling is the equivalent of eminent domain for private corporations, and without fair market compensation.

30. With the advent of horizontal hydraulic fracturing, forced pooling is no longer justified, but is often used as a hammer to require reluctant mineral owners to lease their minerals.

31. Once rare, forced pooling is now much more common as a means of increasing oil and gas operators' profitability because of the large 640-acre to 1,280-acre spacing and drilling units that are being developed through horizontal hydraulic fracturing.

32. The law in Colorado allows forced pooling if operators own or have leased *any* acreage within the relevant drilling unit. Thus, operators can force pool multiple neighborhoods and thousands of people even if they directly have access to only one landowner with mineral interests, no matter the size.

33. While the COGCC does not require operators to report the number of people that they force pool, and does not itself publish this information, Plaintiff estimates that at least 30,000 mineral owners were force pooled in 2018 alone.

34. The process to allow for forced pooling in Colorado requires only that the unleased mineral owner be given a "reasonable" offer to lease their minerals, which is a vague and undefined term.

35. The Act gives the COGCC sole discretion to determine whether an offered lease is "reasonable," the only guideline being that the terms should be "no less favorable than those currently prevailing in the area."

36. COGCC Rule 530b(2) indicates that COGCC will consider the following factors to determine whether a lease is reasonable: (1) Date of lease and primary term or offer with acreage in lease; (2) Annual rental per acre; (3) Bonus payment or evidence of its non-availability; (4) Mineral interest royalty; and (5) Such other lease terms as may be relevant.

37. In reality, however, the COGCC routinely grants forced pooling applications so long as the operator can show that it was able to convince any mineral owners in the space to sign the lease at issue. Given the real threat of force pooling, this is not a fair test of the reasonableness of a lease.

38. A mineral owner is considered non-consenting, and therefore will be forced pooled, if they do not lease (or become an active or passive working interest owner) after receiving notice at least 60 days before the COGCC hearing on the operators' pooling application.

39. The only recourse the non-consenting mineral owners have is to hire an attorney and protest the pooling application to the COGCC. This abuse of the state process is allowing operators to strong arm mineral owners into signing poor leases under duress.

40. The private corporations that are benefitting from force pooling are provided with the means to conduct a government taking, but without due process and without just compensation.

41. In fact, the Act not only allows private companies to access the mineral owner's property, it severely penalizes any non-consenting mineral owners by:

a. Allowing the private gas and oil operators to recover from the non-consenting owner's share of production:

i. <u>One hundred percent</u> of the non-consenting owner's share of the cost of surface equipment beyond the wellhead connections, including stock tanks, separators, treaters, pumping equipment, and piping, <u>plus one hundred percent</u> of the non-consenting owner's share of the cost of operation of the well or wells commencing with first production and continuing until the consenting owners have recovered such costs; and

ii. <u>Two hundred percent</u> of that portion of the costs and expenses of staking, well site preparation, obtaining rights-of-way, rigging up, drilling, reworking, deepening or plugging back, testing, and completing the well, after deducting any cash contributions received by the consenting owners, <u>and two hundred percent</u> of that portion of the cost of equipment in the well, including the wellhead connections.

b. Fixing the non-consenting owners' proportionate royalty at twelve and one-half percent until such time as the consenting owners recover, only out of the non-consenting owner's proportionate seven-eighths share of production, the costs specified above.

42. After recovery of the costs specified above (the "Penalties"), the non-consenting owner then is deemed to be a "working interest owner" whereby, despite any objections to the project, they own their proportionate share of the wells, surface facilities, and production and are liable for further costs as if the owner had originally agreed to drilling of the wells.

43. Put simply, the Act supports operators in forcing mineral owners to either accept offered lease terms or have their minerals taken with deep penalties and, worse, be considered a working interest owner in the project regardless of their health, safety, environmental, or economic concerns.

C. Actions Before Federal District Court

44. On February 8, and 12, 2019, Plaintiff presented oral arguments and testimony to the Court from Wildgrass members who are mineral rights owners. Wildgrass members demonstrated that they were mineral rights owners, living in the affected unit, and had received notices that they would be force pooled if they did not take an offer made by an oil operator, Extraction Oil and Gas, Inc. ("Extraction").

45. State Defendants did not contest Wildgrass members' standing or that these mineral owners were being affected.

46. The Wildgrass members also testified that they were not informed by Defendant COGCC or Extraction about whether or how the project would effect health, safety, or welfare, whether Extraction was financially capable of completing the project, whether they were receiving just and equitable shares, and they felt they had no bargaining power because of the coercive nature of Colorado's forced pooling statute. Wildgrass members also expressed objection to being forced into an association with an industry that would use proceeds gained from fracking their minerals for political speech.

47. Wildgrass' claims addressed how the COGCC administrative process stripped them of the ability to discover information related to their concern during the COGCC permitting process. Wildgrass brought to the Court's attention that Extraction was prepared to start spudding wells at one of the pad sites in the residential fracking project in Broomfield in March 2019 and drilling those wells in June 2019 without having received all permits or leasing from mineral owners.

48. As part of their initial complaint, Wildgrass raised allegations that the Defendant COGCC violated their rights under the United States Constitution involving substantive and procedural due process; violated the privileges and immunities clause; violated freedom of speech and freedom of association; and violated the contract clause.

49. After testimony, the Court ordered that: 1) no drilling occur until June 2019; 2) Defendant COGCC was ordered to hold the pooling hearing on March 11, or 12, 2019; 3) that "there better be clear evidence that [Defendant COGCC] considered environmental, safety, and other issues" such as economy and just and equitable shares.

D. Pre-Hearing Due Process Violations

50. After the February 12, 2019 order, Wildgrass began preparations for the COGCC hearing. In line with the Court's order, Wildgrass raised the following issues as memorialized in the Case Management Order:

- 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 to 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.

51. Although Wildgrass was allowed to engage in discovery based on the parameters of the Court's February 12, 2019 Order, Defendant COGCC denied Wildgrass the ability to discover internal documents involving Extraction's financial condition; and information involving leases, including accepted and rejected offers, made by Extraction to other mineral owners in a 25 square mile radius of the Drilling Unit.

52. With respect to the leases, Wildgrass advised the COGCC hearing officer about the Court's reliance on Judge Winmill's decision in *Citizens Allied for Integrity and Accountability, Inc. v. Schultz*, No. 17-cv-00264, 2019 WL 418406, at *2 (D. Idaho Feb. 1, 2019), and that Wildgrass should be allowed to discover leases within a 25 mile radius. The hearing officer, in direct contravention to the Court's Order, denied Wildgrass the ability to discover the information.

53. In addition, Wildgrass indicated that it intended to submit exhibits evidencing Extraction's history of accidents, including a major explosion in Windsor, Colorado, and major toxic gas release in Erie, Colorado, to address the Court's Order on health, safety, and welfare issues.

54. The COGCC hearing officer denied Wildgrass the ability to present these documents.

55. In the hearing officer's Final Prehearing Order, he noted Wildgrass' objection to Defendant COGCC's jurisdiction regarding pooling of non-migratory minerals.

56. In fact, on March 5, 2019, Wildgrass submitted a Proposed Order Re: COGCC Jurisdiction finding that because the Colorado Oil and Gas Conservation Act, grounded in the Rule of Capture, does not apply to non-transient mineral, such as shale, the COGCC does not have jurisdiction over the pooling matter.

57. The Proposed Order provided the same case law and arguments previously presented to the Court.

58. Despite the fact that this hearing could have taken a number of days, based on witnesses and thousands of documents submitted by Extraction and over a thousand documents submitted by Wildgrass, and despite the fact that Wildgrass requested a minimum of three (3) hours to present its case, the hearing officer denied Wildgrass' request and limited the hearing to one hour and fifteen minutes for each side to present: 1) its case-in-chief with direct and cross examinations counting against the time of the parties; 2) an additional "rebuttal" portion of the hearing, which also included additional direct and cross examination counting against the time of the parties; and 3) closing statements.

59. Wildgrass objected to Extractions' witnesses based on repetitive and cumulative testimony, which was denied. Extraction was allowed nine (9) witnesses. Due to the severely limited amount of time, Wildgrass proposed three (3) witnesses.

E. March 12, 2019 COGCC Hearing

60. At the beginning of the hearing in front of the COGCC Commissioners, Wildgrass again raised its objection to jurisdiction. Specifically, Wildgrass objected that the COGCC did not have jurisdiction to hear the pooling application as hydraulic fracturing of non-transient minerals does not apply to the Rule of Capture upon which the Colorado Oil and Gas Conservation Act is premised.

61. Wildgrass also objected that it was not provided enough time to present its case, thereby, failing to provide it a full and fair opportunity to present its case involving thousands of documents and numerous witnesses.

62. Also, Wildgrass objected to the fact that Extraction had not met its procedural burden to show that it had contacted some of the mineral owners, according to statute.

63. Wildgrass objected to the denial of discovery of Extraction's economic/financial condition.

64. Despite raising these objections at the beginning of the hearing, particularly on the issue of jurisdiction, the COGCC Commissioners failed or refused to issue any rulings on these objections.

65. Throughout the hearing Mimi Larson, COGCC Hearings Manager, was charged with tracking the time of each party, to the very minute and second, to ensure that no party went over its allotted one hour fifteen minute time.

66. Extraction had the burden of proof during the pooling hearing.

I. Leases

67. During the hearing, Extraction admitted that it did not have 13 percent of the leases in the Drilling Unit.

68. While Extraction argued that it attempted to contact the remaining mineral owners, it did not provide any documented evidence of contact such as certified mailings, which it said it had.

69. In discovery, Wildgrass sought discovery of documents demonstrating Extraction's communications with mineral owners, including lease offers, in a 25 mile radius as per Judge Winmill's ruling in *Citizens Allied*.

70. The hearing officer denied Wildgrass discovery in part and ordered Extraction to turn over communications with mineral owners in the Drilling Unit, only.

71. No such documented communications to mineral owners was produced by Extraction to Wildgrass or produced during the hearing.

a. Questions about Fair and Reasonable Leases

72. Wildgrass noted to the COGCC Commissioners during its opening statement that Extraction would produce a self-created Excel spreadsheet of alleged lease offers apparently showing that the lease offers in the area were fair and reasonable. In particular, Wildgrass noted that this document did not demonstrate a rhyme or reason for the "madness" of the lease offers.

73. According to an Extraction witness, Extraction petroleum engineers, not financial experts, came up with what they thought would be fair and reasonable offers made to Wildgrass and other residents.

74. COGCC Commissioner expressed skepticism about the Extraction exhibit. In asking questions of the Extraction witness, Commissioner Boigon highlighted how Extraction's offers were inconsistent and said, "I'm not sure that the exhibit supports the statement you made."

75. COGCC Commissioner Jolly noted that the document was "pretty incomplete without knowing what the royalty is…"

76. At the end of the witness examination, Wildgrass again noted that it requested the leases, but did not receive the leases from Extraction.

77. The only response from COGCC Commissioner Benton, chair of the Commission, was, "So noted."

78. In a closing statement, Commissioner Overturf made the following observation:

> *Extraction bears the burden of proof to provide us that evidence. And when asked, they pointed to Exhibit 3 and Exhibit 1 as the basis for – as their evidentiary support for those criteria that are set forth in statute.*
>
> *And while those exhibits lay out lease offers that were provided by Extraction, there's no contextualization of those offers within what's available in the area at the time, and I think without that type of information, it is impossible, nearly impossible, for the commission to assess whether the terms were offered are just and reasonable.*

79. In other words, Extraction's presentation was based on the tautology that Wildgrass mineral owners were offered leases, ergo, they were offered fair and reasonable leases.

80. In addition, it remained undisputed that neither Extraction nor Defendant COGCC provided any mineral owners with estimates about what just and equitable compensation they should expect from the project.

II. Health, Safety and Welfare

81. At the beginning of the hearing, Wildgrass noted that the day before the hearing (March 11, 2019), the COGCC Commissioners had just fined Extraction $805,000 for failing to conduct required safety tests on many of their wells.

82. Throughout the hearing, Wildgrass presented studies and other health documents received from Extraction involving the health and environmental effects caused by the oil and gas industry.

83. Because of the limited amount of time, Wildgrass was unable to go through each study in a thorough manner or to question Extraction's "expert" witnesses based on these documents found in Extraction's files.

84. One COGCC Commissioner noted that there were safety concerns from Extraction in Weld County.

85. Again, Wildgrass was not allowed to present information related to the Windsor explosion or the massive gas release in Erie investigated by Defendant COGCC.

86. Just before the hearing closed, Wildgrass provided COGCC Commissioners a list of numerous safety violations by Extraction.

87. Defendant COGCC and the COGCC Commissioners were aware that the Court expected that they seriously consider by "clear evidence" Wildgrass' concerns about environment and safety.

88. That being said, while COGCC Commissioners agreed to take "administrative notice" of Extraction's numerous safety violations, there was no further discussion about these violations or the effects on public health, safety, and welfare or on the environment.

89. In fact, the lack of seriousness of health, safety, and welfare was evident in the Commissioners' comments at the closing of the hearing.

90. While the Commission discussed how Extraction and the City and County of Broomfield engaged in a process to address health and safety concerns. Commissioner Boigon lamented that the Court forced the COGCC to address health, safety, and welfare in the pooling hearing. As stated by Commissioner Boigon:

> *And I agree with Commissioner Overturf's characterization of this proceeding. I think if this proceeding had been limited to the issues that I believe the statute and the rule contemplate should be addressed in this proceeding, that is whether the offers tendered were reasonable and complied with the statute and the rule, we could have had a much more focused discussion.*
>
> *Instead, there were all over the place because a lot of extraneous issues were brought into this proceeding, including, in my view, the whole question of protection of public, health, safety, and welfare which we addressed because the federal court asked us to.*

91. Commissioner Boigon apparently forgot, which the Court was careful to remind Defendant COGCC, that the statute requires that the protection of health, safety, and welfare is to be a factor in considering applications for permits.

III. Further Evidence of a Sham Hearing

92. Throughout the hearing, Wildgrass was denied the opportunity:

- to discover or present information related to public health, safety, and welfare and environment;
- to discover information about economics or the financial viability of Extraction;
- to receive and present information about the lack of fair and reasonable offers; and
- to receive a ruling on the jurisdiction question related to force pooling

93. In addition to these due process failures, at the close of hearing, and when witnesses had already left the hearing, Commissioner Benton asked Wildgrass if it had additional time "what would you bring forward."

94. Wildgrass attorneys expressed that giving a few more minutes, at the end of the hearing when people have left, would not cure any defects.

IV. Closing Statements from COGCC Commissioners

Forced Pooling Jurisdiction Question –

95. Wildgrass raised the issue of jurisdiction at the beginning of the March 12, 2019 hearing.

96. Wildgrass also provided the Defendant COGCC a proposed order involving jurisdiction, which included case law.

97. With this objection and pleading in front of Defendant COGCC, Commissioner Boigon made the following statements about the forced pooling statute:

> *The process doesn't work so well in this kind of a setting with a subdivision of hundreds and hundreds of homeowners. Pooling was not originally intended to apply in that context. It's only because of horizontal drilling that this has become an issue.*
>
> *And the rules, the statute, they weren't really written with this kind of situation in mind...*
>
> *And I have seen in my own practice evidence that the pooling process can be abused....*
>
> *I don't subscribe to the theory that whatever an operator wants to put in front of another working interest or mineral owners has to be accepted because that is what the operator is offering...*
>
> *And so I'm sorry for going on on this, but it's important that people, at least, understand my thinking on this whole pooling process which I agree is not – the statute and the rule were written for a different time and different type of context and they're being applied now in ways that*

> *don't always fit really well…*

98. Commissioner Overturf also opined about the jurisdictional question of forced pooling:

> *I heard the number of references to – that the pooling statute is in some ways the product of a different age, and that it was never – at the time it was drafted, it couldn't have been foreseen the circumstances in which it's being applied today.*
>
> *And I have long shared that view.*

99. Even with a jurisdictional objection pending, neither Defendant COGCC nor its commissioners ruled on the jurisdictional issue.

Vague and Ambiguous Statutory Language Interpreting Fair and Reasonable Leases –

100. Commissioner Overturf stated that she believed that the way the statute was structured, "…there is a fundamental inequity in the bargaining power between the operator and the mineral owner who is being faced with or presented with a forced pooling order."

101. She also admitted that with respect to "fair and reasonable" lease offers, she believed that there is a lack of clarity.

102. Commissioner Boigon stated the following: "The statute and the rule are not at all clear. There has to be an offer to lease on reasonable terms. How do you define "reasonable" and whose burden is it to produce evidence of reasonableness? Does Extraction have to support its offer to each mineral owner by providing evidence of leases and bonuses paid all around the area, or is it up to the owner to satisfy itself what the going rate is or at least to raise an objection or a concern and see if extraction will then provide additional detail? The statute and the rule are not at all clear…"

103. Commissioner Ager further stated about the statute: "And I agree with – I think everyone has said it here so far, that it probably doesn't apply to a lot of ways we operate in this basin – or in Colorado anymore. It's hard to apply it and it doesn't always make sense."

COGCC Commission Vote

104. With no ruling on jurisdiction, and despite comments from the commissioners expressing concern about the vagueness of the statute, whether the statute applied in this context, and concerns about Extraction's evidence, Defendant Commission voted 4-1 to approve Extraction's pooling permit.

<u>First Claim for Relief</u>

Violation of Procedural and Substantive Due Process
Amendment V and Amendment XIV, Section 1 to the United States Constitution

105. Plaintiff incorporates by reference each allegation of the preceding paragraphs as if fully set forth herein.

106. The Act denies Wildgrass Owners' rights to substantive and procedural due process implicit in the United States Constitutions.

107. As an example of substantive due process, even COGCC Commissioners agreed that the statute lacks clarity, the statute and rules were written for a different time, the statute is hard to apply and doesn't always make sense.

108. Despite having an outstanding objection to jurisdiction, Defendant COGCC violated Wildgrass Owners procedural due process protections by failing/refusing to decide whether it had jurisdiction on the matter and still proceeded to vote on the forced pooling application.

109. Because the Rule of Capture, upon which the Act is premised, does not apply to the forced pooling of non-transitory minerals via hydraulic fracturing, Defendants violated Wildgrass' due process rights by voting to approve Extraction's pooling application.

110. The Act deprives Wildgrass Owners of property rights implicit in the concept of ordered liberty, and regulates Wildgrass Owners' private property without an adequate state interest.

111. The Act allows the COGCC to deprive a party of property without engaging in fair procedures to reach a decision, and actually requires the COGCC to deprive mineral owners of property for arbitrary reasons.

112. The Act impermissibly requires private property to be taken for another's private use.

113. The Act deprives Wildgrass Owners of the economically viable use of their property, without due process, without just compensation, and for private use.

114. Wildgrass Owners, by participating in the COGCC hearing process, have sought relief through the state and further attempts would be futile.

115. The forced taking of the Wildgrass Owners' property is unrelated to any constitutionally permissible governmental interest and, therefore, violative of the proscriptions against taking private property without just compensation.

Second Claim For Relief

Violation of Freedom of Speech and Association
Amendment I to the United States Constitution
(Applied to States under Amendment IVX)

116. Plaintiff incorporates by reference each allegation of the preceding paragraphs as if fully set forth herein.

117. The Fourteenth Amendment to the United States Constitution incorporates the protections of the First Amendment against the States: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

118. The First Amendment, made applicable to the States by the Fourteenth Amendment, forbids abridgment of the freedom of speech. These same constitutional provisions protect the freedom of an individual to associate for the purpose of advancing beliefs and ideas. *Janus v. Am. Fed'n of State, Cty., & Mun. Employees, Council 31*, 138 S. Ct. 2448, 2464 (2018).

119. "Freedom of Association is an indispensable means of preserving free speech." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 618 (1984) (citations omitted). "The right to eschew association for expressive purposes is likewise protected." *Janus*, 138 S. Ct. at 246, citing *Roberts*, 468 U.S. at 623 ("Freedom of association… plainly presupposes a freedom not to associate.").

120. Wildgrass members, and mineral rights owners in general, have the fundamental right not to associate with an oil and gas company that is adverse to their interests.

121. The Act also violates the free speech rights of mineral owners by compelling them to subsidize private speech by oil and gas operators on matters of substantial public concern.

122. The First Amendment forbids coercing any money from Wildgrass Owners to subsidize the oil and gas operations of a private corporation, especially where the Wildgrass Owners, and the public at large, have strongly objected to the positions the company and the COGCC have taken with respect to residential fracking, and the companies' related activities.

123. As Jefferson famously put it, "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhor[s] is sinful and tyrannical."

124. The government may not prescribe matters of opinion or force citizens to confess by word or act their faith therein, and compelling individuals to mouth support for views they find objectionable violates that cardinal constitutional command.

125. The Act does not promote a compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms.

Third Claim For Relief

Violation of Contract Clause
Article I, Section 10 of the United States Constitution

126. Plaintiff incorporates by reference each allegation of the preceding paragraphs as if fully set forth herein.

127. The Act violates the United States Constitution's prohibition against a state passing any law that "impairs the obligation of contracts."

128. Wildgrass Owners have a right to their property;

129. The Act substantially impairs non-consenting owners' ability to negotiate the value, rights, and duties of a contract with a private oil and gas company.

130. At least one COGCC Commissioner agreed that the way the Act is structured there "is a fundamental inequity in the bargaining power between the operatory and the mineral owner".

131. The Act penalizes non-consenting owners by forcing them to accept unfavorable

terms for their property.

132. Forcing non-consenting owners to accept the Act's statutory penalties impairs the value of any meaningful ability to negotiate a contract.

133. The Act strips remedies of any person who is deemed a non-consenting owner by a private oil and gas company.

134. There is no legitimate public purpose for stripping non-consenting owners' right to negotiate a contract, penalizing non-consenting owners for refusing to hand over their property, and denying remedies to non-consenting owners.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court order the following relief:

1. A declaratory judgment declaring the Act unconstitutional and declaring non-consenting owners' rights;

2. Injunctive relief preventing the Act and related COGCC Rules from being enforced;

3. Attorney's fees and costs incurred in prosecuting this action to Plaintiff; and

4. Issue such other relief as the Court deems just and equitable.

Dated: April 15, 2019

Respectfully submitted,

By: */s/Joseph A. Salazar*

COLORADO RISING FOR COMMUNITIES
Joseph A. Salazar, #35196
PO Box 370
Eastlake, CO 80614-0370
(303) 895-7044 – Office
joe@corising.org

MINDDRIVE LEGAL SERVICES, LLC
James D. Leftwich, #38510
1295 Wildwood Rd.
Boulder, CO 80305-5641
(720) 470-7831 – Office
dan@minddrivelegal.com

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that on this **15th** day of **April, 2019**, the foregoing **FIRST AMENDED COMPLAINT FOR TEMPORARY RESTRAINING ORDER AND INJUNCTION** was sent to the following via CM/ECF:

Office of the Colorado Attorney General
Will Allen
Kyle Davenport
David Beckstrom
Eric Olson
1300 Broadway, 10th Floor
Denver, CO 80203
will.allen@coag.gov
kyle.davenport@coag.gov
eric.olson@coag.gov
david.beckstrom@coag.gov

Attorneys for State Defendants

Brownstein Hyatt Farber Schreck, LLP
Stanley L. Garnett
Mark J. Mathews
David B. Meschke
410 Seventeenth Street, Suite 2200
Denver, CO 80202-4432
sgarnett@bhfs.com
mmathews@bhfs.com
dmeschke@bhfs.com

/s/ Joseph A. Salazar
Joseph A. Salazar

EXHIBIT B

(Declaration)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
EXTRACTION OIL & GAS, INC., *et al.*,[1]	)	Case No. 20-11548 (CSS)
	)	
Reorganized Debtors.	)	(Jointly Administered)

DECLARATION OF THOMAS BEHNKE
IN SUPPORT OF REORGANIZED DEBTORS'
OBJECTION TO PROOF OF CLAIM NO. 2459
FILED BY WILDGRASS OIL AND GAS COMMITTEE

I, Thomas Behnke, pursuant to 28 U.S.C. § 1746, declare:

1. I am a Managing Director at Alvarez & Marsal North America, LLC ("A&M"), restructuring advisors to the above-captioned reorganized debtors (the "Reorganized Debtors"). I, along with my colleagues at A&M, have been engaged by the Reorganized Debtors to provide various restructuring and financial services.

2. As part of my current position, I am responsible for certain claims management and reconciliation matters. I am generally familiar with the Reorganized Debtors' day-to-day operations, financing arrangements, business affairs, and books and records that reflect, among other things, the Reorganized Debtors' liabilities and the amount thereof owed to their creditors as of the Petition Date.

3. I am authorized to submit this declaration (the "Declaration") in support of the *Reorganized Debtors' Objection to Proof of Claim No. 2459 Filed by Wildgrass Oil and Gas*

[1] The Reorganized Debtors in these chapter 11 cases, along with the last four digits of each Reorganized Debtor's federal tax identification number, are: Extraction Oil & Gas, Inc. (3923); 7N, LLC (4912); 8 North, LLC (0904); Axis Exploration, LLC (8170); Extraction Finance Corp. (7117); Mountaintop Minerals, LLC (7256); Northwest Corridor Holdings, LLC (9353); Table Mountain Resources, LLC (5070); XOG Services, LLC (6915); and XTR Midstream, LLC (5624). The location of the Reorganized Debtors' principal place of business is 370 17th Street, Suite 5300, Denver, Colorado 80202.

Committee (the "Objection")[2]. All matters set forth in this Declaration are based on: (a) my personal knowledge; (b) my review of relevant documents or the review by the Reorganized Debtors or my A&M team members of such documents; (c) my view, based on my experience and knowledge of the Reorganized Debtors and the Reorganized Debtors' operations, books and records, and personnel; (d) information supplied to me by the Reorganized Debtors and by others at the Reorganized Debtors' request; or (e) as to matters involving United States bankruptcy law or rules or other applicable laws, my reliance on the advice of counsel or other advisors to the Reorganized Debtors. If called upon to testify, I could and would testify competently to the facts set forth herein and in the Objection.

4. I have reviewed the Proof of Claim (Claim No. 2459) filed the Wildgrass Oil and Gas Committee.

5. I have also reviewed the Objection and am directly, or by and through other personnel or representatives of A&M or personnel or representatives of the Reorganized Debtors, familiar with the information contained therein.

6. The information contained in the Objection is true and correct to the best of my knowledge.

7. The Proof of Claim attached as Exhibit A to the Objection is a true and correct copy of the Proof of Claim filed in the bankruptcy cases.

8. Exhibits C and D to the Objection are true and correct copies of the Colorado District Court's Order and the Court of Appeal's Order and Judgment.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

---

[2] All capitalized terms used but otherwise not defined herein shall have the meanings set forth in the Objection.

Executed on July 8, 2021

/s/ Thomas Behnke
Thomas Behnke
Managing Director
Alvarez and Marsal North America, LLC

EXHIBIT C

(Colorado District Court Order)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge R. Brooke Jackson

Civil Action No. 19-cv-00190-RBJ

WILDGRASS OIL AND GAS COMMITTEE,

Plaintiff,

v.

STATE OF COLORADO,
JARED S. POLIS, in his official capacity as Governor of the State of Colorado
COLORADO OIL AND GAS CONSERVATION COMMISSION, and
JEFFREY ROBBINS, in his official capacity as Director of the Colorado Oil and Gas Conservation Commission,

Defendants

AMERICAN PETROLEUM INSTITUTE, and
COLORADO OIL AND GAS ASSOCIATION,

Intervenors.

ORDER

This lawsuit arises out of plaintiff's efforts to prevent hydraulic fracturing or "fracking" from occurring in their residential neighborhood. Plaintiff Wildgrass Oil and Gas Committee ("Wildgrass") was formed by the Wildgrass Homeowners' Association of the Wildgrass residential subdivision in Broomfield, Colorado to assist Wildgrass homeowners in advocating against local fracking projects. Plaintiff also seeks to challenge "forced pooling," the process by which local mineral owners may be forced to allow oil and gas companies to extract their minerals. Defendants the Colorado Oil and Gas Conservation Commission ("COGCC"), COGCC Director Jeffrey Robbins, and Colorado Governor Jared S. Polis ("state defendants") as well as intervenor defendants American Petroleum Institute and Colorado Oil and Gas

Association ("intervenor defendants") move to dismiss all claims for both failure to state a claim and pursuant to the Court's discretionary authority under the *Burford* abstention doctrine. ECF Nos. 66, 67. State defendants also move to dismiss the Governor of Colorado Jared Polis based on Eleventh Amendment Immunity. ECF No. 67. In addition, intervenor defendants move to dismiss the issue as a non-justiciable political question. ECF No. 66. For the reasons set forth in this order, the case is dismissed.

BACKGROUND

Wildgrass brings constitutional challenges to Colorado statute C.R.S. § 34-60-116, a provision of the Colorado Oil and Gas Conservation Act. Defendant COGCC is the state agency responsible for administering § 34-60-116.

A. <u>§ 34-60-116</u>

The statutory provision creates a process through which private entities can apply to pool the interests of a group of mineral owners. This process was intended to allow for more efficient oil and gas drilling by decreasing waste and avoiding drilling of unnecessary wells. § 34-60-116. Once a drilling unit has been established, operators may extract oil and gas and the proceeds from the venture are divided among the well operator and the pooled mineral owners according to the statutory compensation scheme. *Id.*

The provision attempts to address flaws in the "rule of capture," under which the lessee of an oil and gas lease acquires title to all oil and gas produced from a drilled well, including minerals that may have migrated from adjoining lands. The rule of capture acknowledges the natural movement or migration of oil and gas across property lines without any human intervention. The rule also incentivizes increased well-drilling so that individual mineral owners

do not lose the race to extract their resources. Pooling reduces the number of wells drilled while also compensating mineral owners for their share of the resources extracted.

In Colorado, the rule of capture has been applied to both conventional drilling and fracking methods of extraction. Fracking is a drilling technique in which rock formations are fractured by pressurized liquid, releasing gas and other minerals into the well. Unlike in conventional drilling, fracking allows operators to access non-migratory minerals contained in rock formations that have not escaped into adjoining lands. Current methods allow fracking operators to drill over two miles horizontally from the central well pad, allowing access to minerals far from the site of drilling.

Operators may apply to the COGCC to establish drillings units and pool the interests of mineral owners within those units. § 34-60-116. Owners of the relevant interests may participate in pooling voluntarily, or operators may apply to the COGCC for permission to "force pool" non-consenting owners. § 34-60-116(6)(b)(I). COGCC may grant permission to force pool to "any interested person" who applies. *Id.* The operator must make a "just and reasonable" offer to the interest owners, and the COGCC must provide notice and a hearing before issuing the forced pooling order. § 34-60-116(6)(b)(II). The COGCC has authority to determine what constitutes a reasonable offer. § 34-60-116(7)(d)(II). Wildgrass claims that the COGCC "routinely grants forced pooling applications so long as the operator can show that it was able to convince any mineral owners in the space to sign the lease at issue." ECF No. 65 at 8. Once the operator is granted authority to force pool, mineral owners who do not lease their rights are considered non-consenting and subject to forced pooling. *Id.*

In addition to permitting operators to extract non-consenting owners' minerals, forced pooling also imposes other consequences: Operators may recover one hundred percent of the

non-consenting owners' share of equipment and operation expenses, as well as two hundred percent of some preparation and equipment costs. After these costs are recovered, the non-consenting owners become working interest owners. *Id*. at 9.

B. Extraction's Application for Forced Pooling

In June of 2018 Extraction Oil & Gas, Inc. ("Extraction") sent lease offers to mineral owners in Broomfield, including Wildgrass mineral owners. Shortly after, Extraction began the COGCC applications to establish spacing units in the Broomfield areas, proposing to construct up to 120 horizontal wells from four well mega-pads in residential areas of Broomfield. ECF No. 65 at 11.

On July 17, 2018 Extraction sent an election letter to Wildgrass owners giving them 35 days to respond to either participate in these "Livingston" wells or refuse to consent. *Id*. at 2. The letter stated that the non-consenting owners would be subject to a non-consent penalty. *Id*. Extraction then sent a second election letter on August 27. The second letter asked for a response with each owner's election within 60 days. *Id*. On August 31 Extraction filed an application with the COGCC to force pool the Wildgrass owners. *Id*. at 11. The COGCC originally set the hearing on the application for October 29 and 30, 2018, but it did not occur until March 12, 2019. ECF No. 65 at 14.

On July 6, 2018 Wildgrass filed a lawsuit in Denver District Court challenging the various COGCC decisions under the Colorado Administrative Procedure Act (Case No. 2018cv32513). The Denver District Court ruled against Wildgrass, and Wildgrass has filed a pending appeal (Case No. 2019CA001212).

Wildgrass filed a complaint in this court seeking a restraining order against the COGCC on January 23, 2019. ECF No. 1. It filed an amended complaint on April 30, 2019. ECF No.

65. The complaint challenges the constitutionality of the forced pooling statute and the COGCC's approval of Extraction's forced pooling application, as well as the COGCC's refusal to consider health, safety, welfare, and environmental concerns in its decisions. *Id*.

On February 8 and 12, 2019 this Court heard oral arguments and testimony from Wildgrass and the COGCC. ECF Nos. 36, 37. At the hearing, Wildgrass voiced its concern that Extraction planned to begin drilling before the forced pooling hearing or ruling would occur. ECF No. 36. However, Extraction had revised its timeline to begin drilling in June. ECF No. 37. The Court also noted that the issues Wildgrass raised were not ripe because the forced pooling hearing had not yet occurred. *Id*. The Court directed COGCC to consider the health, safety, welfare, environmental and economic concerns raised by Wildgrass at the upcoming hearing. *Id*.

C. March 12, 2019 COGCC Forced Pooling Hearing

At the COGCC hearing Wildgrass was given an hour and fifteen minutes to speak. It argued this was insufficient time to present its case on public safety, welfare, and environmental facts, which involved numerous witnesses and documents. ECF No. 65 at 14. Wildgrass also argued that the COGCC did not have jurisdiction to hear the pooling application because the rule of capture did not apply to non-migratory minerals captured through fracking. *Id*. at 13. Some commissioners expressed agreement with the sentiment that the pooling statute was "written for a different time and a different type of context." *Id*. at 19. Wildgrass finally argued that Extraction had not met its burden of contacting at least some of the mineral owners, and that Extraction should have provided discovery on its "economic stability." *Id*. at 14.

During the hearing, Extraction admitted it did not have 13 percent of the leases of the relevant mineral interests. *Id*. at 15. Although Extraction claimed it had certified mailing

receipts documenting its attempts to contact mineral owners, such receipts were never produced to Wildgrass or to the COGCC. *Id*. Extraction did produce a spreadsheet documenting lease offers made to mineral owners. *Id*. The COGCC commissioners stated that based on the evidence provided "it is impossible or nearly impossible[] for the commission to assess whether the terms were offered [sic] are just and reasonable." *Id*. at 16.

Wildgrass again raised health, safety, and environmental concerns during the hearing. In response, a commissioner stated that the hearing should have been limited to the issues of "whether the offers tendered were reasonable and complied with the statute and the [COGCC administrative] rule," and ignored "the whole question of protection of public, health, safety, and welfare which we addressed because the federal court asked us to." *Id*. at 18. The COGCC voted 4-1 to approve Extraction's forced pooling application. *Id*. at 20.

On March 26, 2019 this Court held an evidentiary hearing and granted the intervenor defendants' motion to intervene. ECF No. 49. Shortly after, Wildgrass filed this amended complaint. ECF No. 65. State and intervenor defendants separately moved for summary judgment. ECF Nos. 67, 66.

ANALYSIS

A. Justiciability

1. Ripeness

Intervenor defendants argue that the COGCC's decisions are not subject to this court's review because Wildgrass has not exhausted its state remedies by appealing the COGCC decisions in state court. ECF No. 66 at 8. However, "the settled rule is that 'exhaustion of state remedies 'is not a prerequisite to an action under [42 U.S.C.] § 1983.'" *Knick v. Twp. of Scott,*

PA, 139 S. Ct. 2162, 2167 (2019) (quoting *Heck v. Humphrey*, 512 U.S. 477, 480 (1994)). Wildgrass need not have exhausted state remedies before bringing these claims.

2. Standing

Intervenor defendants raise the issue of associational standing in a footnote. "Even in the absence of injury to itself, an association may have standing solely as the representative of its members. . . . The association must allege that its members, or any one of them, are suffering immediate or threatened injury as a result of the challenged action." *Warth v. Seldin*, 422 U.S. 490, 511 (1975). Defendants claim that "there are no allegations establishing that any of [Wildgrass'] members are nonconsenting owners, as opposed to merely mineral rights owners." ECF No. 66 at 9 n.8. They admit that if Wildgrass members are in fact non-consenting owners, they would meet the injury-in-fact requirement of standing. *Id.*

At the temporary restraining order hearing before this Court on February 8, 2019, Wildgrass members testified that they had not signed the leases Extraction presented to them, and that the deadline to do so had passed, making them non-consenting owners under § 34-60-116. Wildgrass members therefore have met the injury-in-fact requirement. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 575 (1992).

3. Political question

Intervenor defendants argue plaintiffs have brought "non-justiciable political question[s]" before this Court. ECF No. 66 at 7. A case involves a political question when it implicates

> a [1] textually demonstrable constitutional commitment of the issue to a coordinate political department; [2] or a lack of judicially discoverable and manageable standards for resolving it; [3] or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; [4] or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; [5] or an unusual need for unquestioning adherence to a political decision already made; [6] or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Baker v. Carr, 369 U.S. 186, 217 (1962).

According to defendants, to resolve this case I must decide the policy question of "whether fracking under the Pooling Statutes actually is good policy for achieving goals such as reducing waste and protecting mineral owners' rights." ECF No. 66 at 9. They also claim I must consider "whether fracking is consistent with the rule of capture" which requires "technical geological determinations regarding the differences between oil and gas obtained via fracking" as well as consideration of "broad policy questions regarding prevention of waste and protection of correlative rights that are not susceptible" to judicially manageable standards. *Id.* at 7–8.

None of defendants' arguments hold water. I am not asked to decide whether pooling or fracking is "good policy" but rather whether the statute violates the First Amendment, Contracts Clause, or Due Process Clause. The "technical geological determinations" defendants cite do not fit into any category of impermissible political questions. Nor am I required to decide "broad policy questions regarding prevention of waste and protection of correlative rights." To examine Wildgrass' claims I need not make any of my own policy determinations on waste prevention or protection of correlative rights in the context of fracking. Though at points in this opinion I do consider the state and public interest in those issues, I need not make any policy decisions myself. Therefore, I reject the argument that this case involves a nonjusticiable political question.

B. Eleventh Amendment Immunity

The Eleventh Amendment of the United States Constitution bars claims brought in federal courts against states, state agencies, and state officials when sued in their official capacity for damages or retroactive relief. *See Edelman v. Jordan*, 415 U.S. 651, 662–63 (1974). However, the Eleventh Amendment "does not bar a suit against state officials in their official

capacities if it seeks prospective relief for the officials' ongoing violation of federal law." *Harris v. Owens*, 264 F.3d 1282, 1290 (10th Cir. 2001). "Because an assertion of Eleventh Amendment immunity concerns the subject matter jurisdiction of the district court, [the Court] address[es] that issue before turning to the merits of the case." *Ruiz v. McDonnell*, 299 F.3d 1173, 1180 (10th Cir. 2002).

State defendants argue that the Eleventh Amendment bars suit against Governor Polis because Governor Polis has no connection with enforcement of the act. ECF No. 67 at 14–15. "In making an officer of the state a party defendant in a suit to enjoin the enforcement of an act alleged to be unconstitutional, it is plain that such officer must have some connection with the enforcement of the act, or else it is merely making him a party as a representative of the state, and thereby attempting to make the state a party." *Peterson v. Martinez*, 707 F.3d 1197, 1205 (10th Cir. 2013) (quoting *Ex parte Young*, 209 U.S. 123, 157 (1908)). Defendants claim Governor Polis lacks a particular duty to enforce the statutory pooling provisions of the act, and that "granting any prospective relief against the Governor" would have no practical effect because "only the Commission issues pooling orders." ECF No. 67 at 15.

In Colorado, "when [the defendant] is an administrative agency, or the executive branch of government, or even the state itself, the Governor, in his official capacity, is a proper defendant because he is the state's chief executive. For litigation purposes, the Governor is the embodiment of the state." *Ainscough v. Owens*, 90 P.3d 851, 858 (Colo. 2004). Defendants argue that the Colorado Supreme Court limited the instances in which the Governor can be sued to those where he is the only available party. ECF No. 77 at 1 (citing *Developmental Pathways v. Ritter*, 178 P.3d 524 (Colo. 2008)). In *Developmental Pathways v. Ritter*, the Colorado Supreme Court upheld the governor as an appropriate defendant but noted that if the relevant

state commission had been in existence at the time the lawsuit was filed, they "may have reached a different conclusion." 178 P.3d at 529. Though the Court appears open to imposing such a limitation, they have not yet done so, and a survey of Colorado law shows a "long recognized practice of naming the governor, in his official role as the state's chief executive, as the proper defendant in cases where a party seeks to enjoin state enforcement of a statute, regulation, ordinance, or policy." *Cooke v. Hickenlooper*, No. 13-CV-01300-MSK-MJW, 2013 WL 6384218, at *8 (D. Colo. Nov. 27, 2013), *aff'd in part sub nom. Colorado Outfitters Ass'n v. Hickenlooper*, 823 F.3d 537 (10th Cir. 2016) (citing *Developmental Pathways*, 178 P.3d at 529); *see also Ainscough*, 90 P.3d at 858 (listing cases and noting that "[t]he variety of the cases illustrates how widespread and well-established this practice is").

Until the Colorado Supreme Court indicates more explicitly its intention to invalidate its longstanding practice, I will not do so. Therefore, I find Governor Polis in his official capacity is an appropriate defendant in this case.

C. *Burford* Abstention

Both motions argue I should dismiss this case under *Burford* abstention, which "arises when a federal district court faces issues that involve complicated state regulatory schemes." *Lehman v. City of Louisville*, 967 F.2d 1474, 1478 (10th Cir. 1992) (citing *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943)). Abstention doctrines are the exception and not the rule and should only be used "where the order to the parties to repair to the state court would clearly serve an important countervailing interest." *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 813–14 (1976) (quoting *County of Allegheny v. Frank Mashuda Co.*, 360 U.S. 185, 188–89 (1959)). The Supreme Court has distilled the *Burford* abstention doctrine as follows:

> Where timely and adequate state-court review is available, a federal court sitting in equity must decline to interfere with the proceedings or orders of state

> administrative agencies: (1) when there are difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case the at bar; or (2) where the exercise of federal review of the question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern.

New Orleans Pub. Serv., Inc. v. Council of City of New Orleans (NOPSI), 491 U.S. 350, 361 (1989) (quoting *Colo. River Water Conservation Dist.*, 424 U.S. at 814) (internal quotations omitted).[1]

First, Wildgrass seeks declaratory and injunctive relief in its amended complaint. Therefore, this Court is sitting in equity for this action.

Second, timely and adequate state court review is available for Wildgrass' claims. Wildgrass argues that this Court is their only recourse because the COGCC is a state administrative agency and does not have authority to review federal constitutional claims. ECF No. 74 at 8. Though the agency itself may not be able to decide federal constitutional claims, the state courts certainly can review the constitutionality of COGCC decisions. COGCC decisions are subject to such review under the Colorado Administrative Procedure Act ("APA"), C.R.S. §§ 24-4-101 to -108 ("Any . . . final order of the commission shall be subject to judicial review in accordance with the provisions of section 24-4-106, C.R.S."). Other courts have found such state administrative review procedures to meet the *Burford* requirement of timely and adequate

---

[1] Until 1988, the leading test for *Burford* abstention in this circuit came from *Grimes v. Crown Life Insurance Company*, 857 F.2d 699, 704–05 (10th Cir.1988). Since 1988, however, the Supreme Court's ruling in *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans (NOPSI)*, 491 U.S. 350, 361 (1989), and *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706 (1996), have narrowed the test. The Tenth Circuit has affirmed that these two cases now define the scope of abstention under *Burford*. *See Oklahoma ex rel. Doak v. Acrisure Bus. Outsourcing Servs., LLC*, 529 F. App'x 886, 897 (10th Cir. 2013) (unpublished) ("Since our decision in *Grimes*, the Supreme Court has narrowed application of the *Burford* abstention doctrine."). State defendants erroneously claim that *NOPSI* is inapplicable, arguing the *NOPSI* Court only considered abstention under *Younger v. Harris*, 401 U.S. 37 (1971). ECF No. 77 at 3. However, the *NOPSI* court also expressly declined to apply *Burford* abstention. *NOPSI*, 491 U.S. at 363. *NOPSI* has since become the main articulation of the *Burford* standard. *See Quackenbush*, 517 U.S. 706.

state court review. *See, e.g.*, *Adrian Energy Assocs. v. Michigan Pub. Serv. Comm'n*, 481 F.3d 414, 422 (6th Cir. 2007); *Coal. for Health Concern v. LWD, Inc.*, 60 F.3d 1188, 1191 (6th Cir. 1995); *Palumbo v. Waste Techs. Indus.*, 989 F.2d 156, 160 (4th Cir. 1993). The state court system provides timely and adequate state court review of the COGCC decision.

Wildgrass has appealed several of the COGCC decisions under the Colorado APA in the Colorado state courts, demonstrating that timely and adequate state court review is available. Though Wildgrass does not raise the argument, I consider the import of Wildgrass's failure to raise some of the constitutional issues it brings here in its state appeal of the COGCC decision. Because Wildgrass did not appeal the decision within the statutorily prescribed time frame, Wildgrass may be unable to seek state court review. The issue then is whether timely and adequate state court review is sufficiently "available" despite Wildgrass' failure to take advantage of it. I find that it is. Wildgrass' failure to pursue state court review cannot render review unavailable. Otherwise review would be rendered unavailable at the convenience of the losing party, depending on whether they decided to seek it. The availability and adequacy of state court review cannot be determined by Wildgrass' failure to pursue the remedies available to them.

Third, some claims in this case would require interference with state administrative agency proceedings and orders. Wildgrass' procedural due process claims ask this court to consider whether the COGCC correctly exercised jurisdiction over Extraction's application for forced pooling. Wildgrass argues that COGCC shouldn't have exercised jurisdiction because the forced pooling statute, which was grounded in the rule of capture, only applies to non-transient minerals. To rule on these motions this Court would need to determine whether the COGCC complied with its own state statute by exercising jurisdiction.

The procedural due process arguments also hinge on whether the COGCC hearing process complied with the forced pooling statute. Wildgrass asks this court to consider not simply whether they had an opportunity to be heard, but whether that opportunity allowed them to present evidence on all the factors listed by the forced pooling statute. ECF No. 75 at 9–10. It appears that this is the type of case to which *Burford* abstention might apply if I conclude that it meets the other requirements listed in *New Orleans Public Services, Inc. v. Council of City of New Orleans (NOPSI)*.

Under *NOPSI* I first consider whether this case involves "difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case the at bar." 491 U.S. at 361. In *NOPSI* the Supreme Court declined to abstain under *Burford* because the case did not involve either state law claims or federal claims "entangled in a skein of state-law that must be untangled before the federal case can proceed." *Id*. The Court stated:

> While *Burford* is concerned with protecting complex state administrative processes from undue federal influence, it does not require abstention whenever there exists such a process, or even in all cases where there is a 'potential for conflict' with state regulatory law or policy. . . . Unlike a claim that a state agency has misapplied its lawful authority or has failed to take into consideration or properly weigh relevant state-law factors, federal adjudication of this sort of pre-emption claim would not disrupt the State's attempt to ensure uniformity in the treatment of an 'essentially local problem.'

Id. at 362.

This case, like *NOPSI*, does not involve state-law claims. Instead, Wildgrass brings constitutional challenges to the validity of the Colorado statute. Unlike *NOPSI*, however, Wildgrass' procedural due process claims ask this Court to examine the COGCC's application of the forced pooling statute to non-migratory minerals and consider whether the COGCC applied all the state-law factors when considering Extraction's application. This case therefore requires

the court to determine whether the COGCC had "misapplied its lawful authority or failed to take into consideration or properly weigh relevant state-law factors" of § 34-60-116. *Id*. Because evaluation of this claim would require evaluating the COGCC's longstanding methods of applying its own statute, it seems likely that federal adjudication of this sort of claim *would* disrupt the state of Colorado's attempt to ensure uniformity in the application of the forced pooling statute. *See id*.

In *Burford* itself the plaintiff brought a constitutional claim to challenge the reasonableness of a state agency's grant of an oil drilling permit. *Burford*, 319 U.S. at 333–34. The claim challenged the administrative proceeding in which the permit was granted. *Id*. Resolution of the case depended on review of the state agency's application of state-law factors and was therefore likely to create conflicts between federal and state courts' interpretation of state law. I see a similar risk here.

Other courts have counseled abstention when a claim appears to involve "state law in federal law clothing." *Johnson v. Collins Entm't Co.*, 199 F.3d 710, 721 (4th Cir. 1999); *see also Browning–Ferris v. Baltimore County*, 774 F.2d 77 (4th Cir. 1985) (finding *Burford* abstention appropriate where federal claims under 42 U.S.C. § 1983 involved questions of local land use policy). In *Johnson v. Collins Entertainment Co.* the Fourth Circuit held that

> [n]avigating [state law] issues without definitive state court guidance brings federal courts into the treacherous waters of state political controversy. Even if the federal and state court systems happen to arrive at the same ultimate resolution on an issue of important state public policy, there is real value to allowing the states the first crack at deciding issues so pertinent to their own self-governance.

Johnson, 199 F.3d at 721.

Though Wildgrass asks me to determine whether § 34-60-116 is constitutional, in substance what it actually is asking is that I determine whether the COGCC correctly applied §

34-60-116. Not only would I have to consider whether the COGCC correctly applied the statute in this particular instance, but whether the COGCC has previously approved and can continue to approve forced pooling for non-migratory mineral extraction, a question of state statutory interpretation that is difficult and controversial. To me, this looks like a state law question in federal law clothing, one that would bring this court into an area of state political controversy and could easily create conflicts between state and federal interpretations.

This case also bears on policy problems of substantial public import. In *Burford* the Court concluded that the drilling permitting process was "of vital interest to the general public," and that the state administrative structure was created to reflect that importance. 319 U.S. at 325. Colorado courts have frequently noted the importance of the state's oil and gas regulatory scheme. *See, e.g.*, *City of Longmont v. Colo. Oil & Gas Ass'n*, 369 P.3d 573, 582 (Colo. 2016); *Grant Bros. Ranch, LLC v. Antero Res. Piceance Corp.*, 409 P.3d 637, 641 (Colo. Ct. App. 2016). This importance is also reflected in the complexity of the Colorado oil and gas administrative processes. *See* C.R.S. §§ 34-60-101 to -131. As in *Burford* itself, the state of Colorado has established a comprehensive, though perhaps imperfect, regulatory scheme in order to address this issue of substantial public importance. Significantly, this is further supported by the recent updates to the regulatory scheme extensively debated by both the public, the Colorado General Assembly, and the parties. *See* 2019 Colo. Legis. Serv. Ch. 120 (S.B. 19-181) (West); *see also Grimes*, 857 F.2d 699 (finding that Oklahoma's "complex and comprehensive" insurer liquidation scheme counseled abstention); *First Penn-Pac. Life Ins. Co. v. Evans*, 304 F.3d 345, 349 (4th Cir. 2002) (finding rehabilitation and regulation of state savings and loan industry a matter of substantial state concern in the *Burford* abstention context); *Johnson v. Collins Entm't Co.*, 199 F.3d 710, 720 (4th Cir. 1999) (finding regulation of gambling a "paramount" state

policy concern in the *Burford* abstention context); *Sugarloaf Citizens Ass'n v. Montgomery Cty., Md.*, 33 F.3d 52 (4th Cir. 1994) (noting that "questions of state and local land use law are 'classic' *Burford* situations").

I conclude that the importance of these policy problems and the state law questions "transcends" the importance of the case at hand. *NOPSI*, 491 U.S. at 361. The *Burford* court concluded that the due process constitutional claim was of "minimal federal importance, involving solely the question whether the commission had properly applied Texas' complex oil and gas conservation regulations." *NOPSI*, 491 U.S. at 360. Here, the procedural due process challenge similarly asks only whether the commission properly applied the statute. Answering this question would have far reaching consequences not on the federal level, but on the state level.

The case law provided by Wildgrass does not support its argument that *Burford* abstention is inappropriate. For example, Wildgrass cites *Alabama Public Service Commission v. Southern Railroad Co.*, for the proposition that "it was never a doctrine of equity that a federal court should exercise its judicial discretion to dismiss a suit merely because a State court could entertain it." 341 U.S. 341, 351 (1951). However, in that case the Supreme Court held that the district court should have abstained under *Burford* from reviewing the decision of a state commission on whether there was public need for purely intrastate railroad service. In *Wisconsin v. Constantineau*, 400 U.S. 433 (1971), the Supreme Court did not consider abstention under *Burford*. In *Zablocki v. Redhail*, 434 U.S. 374 (1978), the Supreme Court rejected *Burford* abstention because the constitutionality of a state marriage statute did not involve "complex issues of state law, resolution of which would be disruptive to state efforts to establish a coherent policy." 434 U.S. at 677 n.5.

In sum, I conclude that Wildgrass' procedural due process claims fit the first *NOPSI* category. I therefore find it appropriate to discretionarily abstain from deciding Wildgrass' procedural due process claims under *Burford*.

Wildgrass' other claims, however, do not meet all these criteria. Specifically, it is not clear that the other claims would require me to wade into the state administrative process and decide complex issues of state law in the manner that the procedural claims would. Because abstention is a rare exception that should be sparingly applied, *Colo. River Water Conservation Dist.*, 424 U.S. at 813–14, I decline to abstain on the remaining claims and proceed to consider defendants' other arguments for dismissal.

D. Failure to State a Claim

To survive a Rule 12(b)(6) motion to dismiss, the complaint must contain "enough facts to state a claim to relief that is plausible on its face." *Ridge at Red Hawk, L.L.C. v. Schneider*, 493 F.3d 1174, 1177 (10th Cir. 2007) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A plausible claim is one that "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). While courts must accept well-pled allegations as true, purely conclusory statements are not entitled to this presumption. *Id.* at 678, 681. Therefore, so long as the plaintiff pleads sufficient factual allegations such that the right to relief crosses "the line from conceivable to plausible," she has met the threshold pleading standard. *Twombly*, 550 U.S. at 556, 570.

1. First Amendment Claims

Wildgrass argues that forced pooling violates the First Amendment in two distinct ways. First, Wildgrass argues that forced pooling requires non-consenting mineral owners to "associate" with oil and gas companies. Second, Wildgrass argues that forced pooling compels

them to "subsidize private speech" of oil and gas companies. ECF No. 54 at 22–23. I address each argument in turn.

a. Association

"Freedom of association . . . plainly presupposes a freedom not to associate." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 618 (1984). "The right to eschew association for expressive purposes is likewise protected." *Janus v. Am. Fed'n of State, Cty., & Mun. Employees, Council 31*, 138 S. Ct. 2448 (2018) (quoting *Roberts v. U.S. Jaycees*, 468 U.S. 609, 623 (1984).

Plaintiffs argue that the forced pooling statute requires them to associate with oil and gas companies through "compulsory monetary contribution." ECF No. 74 at 15. Defendants argue that Wildgrass has not alleged that the forced pooling statute requires association for expressive purposes. ECF No. 66 at 13–14.

The expressive purpose of the alleged compelled association is attenuated and theoretical. According to Wildgrass, the forced pooling statute forces them to associate with oil and gas companies who "will likely use at least some of the compelled payments to participate in advertising and political speech by industry advocacy groups . . . , speech which may be highly offensive to Plaintiff." ECF No. 74 at 16.

It is worth noting that non-consenting mineral owners do not pay the drilling operators. Rather the operators are entitled to recoup non-consenting owner's operating costs from their share of the profits. However, even if this recoupment scheme could be viewed as compelled association, that association cannot be said to be "for expressive purposes." There is no evidence that the operators' recovery is used for expressive purposes, as opposed to what it is expressly meant to compensate, namely operators' operating costs. Though it is true that oil and gas companies engage in political speech, this speech is too disconnected from the forced pooling

scheme to find that the force pooled members are associated with the oil and gas companies for expressive purposes.

The Supreme Court's "case law recognizes radically different constitutional protections for expressive and nonexpressive associations." *Roberts*, 468 U.S. at 638 (O'Connor, J, concurring) (listing cases distinguishing purely expressive and purely commercial associations). Though the Court acknowledges that associations are often mixed, there is no evidence here that any association among Wildgrass owners and oil and gas operators is in any way expressive. Almost all expressive association cases involve groups formed for associational purposes—for example, boy scout troops (*see Boy Scouts of Am. v. Dale*, 530 U.S. 640 (2000)) or religious organizations (*see Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557 (1995))—who challenge a requirement that they associate with certain types of individuals. Wildgrass has not cited, nor have I unearthed, any case remotely similar to the situation here, in which individual property owners feel they have been compelled to associate with oil and gas operators who have been given permission by the state to extract their minerals.

The forced pooling statute is also distinguishable from the other associational cases Wildgrass cited. Wildgrass relies primarily on *Janus v. American Federation of State, County, & Municipal Employees, Council 31*, a recent decision in which the Supreme Court found that forced contribution to a labor union violated the First Amendment. 138 S. Ct. 2448, 2464 (2018). In *Janus*, the union dues funded the union's representation of employees in the collective bargaining process. *Id*. at 2460. The Court found that in negotiations with employers, "the union speaks for the employees," and that the government did not have a sufficiently compelling interest in requiring all employees to support that speech. *Id*. at 2468.

This case looks quite different. The forced pooling statute does not exist as a mechanism for funding speech like the union dues scheme in *Janus*. Rather it exists, as Wildgrass notes, to overcome wasteful and unfair drilling practices that result from the rule of capture. ECF No. 54 at 6–7. That some drilling companies who apply to the COGCC for forced pooling permission will later engage in political speech with which Wildgrass disagrees does not turn the statute into one compelling association for expressive purposes. Wildgrass has not raised a genuine dispute regarding whether they have been forced to associate for expressive purposes.

b. Subsidizing Private Speech

"Compelling a person to subsidize the speech of other private speakers raises [] First Amendment concerns." *Janus*, 138 S. Ct. at 2464.

Wildgrass claims that just as the statute requires non-consenting owners to associate with oil and gas companies, it also requires them to subsidize the oil and gas companies' speech. ECF No. 75 at 15. Wildgrass again relies on *Janus* to support its theory. As discussed above, this reliance is misplaced. In *Janus*, non-union member employees were required to pay dues that would directly fund union speech in collective bargaining. 138 S. Ct. at 2464. Here, just as in the association claim, the connection between the statute and the alleged speech that Wildgrass claims it must subsidize is too attenuated. The forced pooling statute is not aimed at and does not fund speech. Though some forced pooling applicants may engage in speech the Wildgrass owners disapprove of, the statutory recoupment scheme does not serve to fund this.

Because the statute does not compel association nor subsidization of private speech, I must dismiss the first amendment claim in its entirety.

2. Substantive Due Process

Wildgrass argues that the forced pooling statute violates their substantive due process rights because (a) it forces them to associate with oil and gas operators, (b) it is unreasonably vague, and (c) it constitutes a taking for purely private use. ECF No. 75 at 10–14. I address each argument in turn.

a. Freedom of Association

Wildgrass bases this freedom of association challenge on the same allegations as its First Amendment freedom of association claim, namely that Wildgrass members are forced to associate with oil and gas operators "for expressive purposes." ECF No. 75. Wildgrass is correct that freedom to associate or not to associate "for the advancement of political beliefs" is a fundamental right. *Illinois State Bd. of Elections v. Socialist Worker's Party*, 440 U.S. 173, 184 (1979).

However, Wildgrass has not shown that the forced pooling statute requires them to associate for the advancement of political beliefs. Though forced pooling does require Wildgrass owners to interact on some level with oil and gas operators, there is no evidence it requires them to associate with such operators for the advancement of either party's political beliefs. Like their First Amendment freedom of association claim, Wildgrass fails to show that forced pooling forces them to associate for an impermissible reason, such as for an expressive purpose with which they disagree.

b. Vagueness

Wildgrass claims the forced pooling statute is vague because it does not define what constitutes a "reasonable offer" under § 34-60-116(7)(d)(I). ECF No. 74 at 12–13.

"There are two possible, and independent, reasons a statute may be so vague it constitutes a Fourteenth Amendment violation: First, if it fails to provide people of ordinary intelligence a

reasonable opportunity to understand what conduct it prohibits. Second, if it authorizes or even encourages arbitrary and discriminatory enforcement." *Faustin v. City & Cty. of Denver, Colo.*, 423 F.3d 1192, 1201–02 (10th Cir. 2005) (quoting *Hill v. Colorado*, 530 U.S. 703, 732 (2002)) (internal quotations omitted). The first scenario does not apply: The forced pooling statute is not of the type that prohibits conduct and could create a due process violation by preventing ordinary individuals from knowing what conduct is prohibited. Wildgrass must therefore allege sufficient facts to show that the statute authorizes or encourages arbitrary or discriminatory enforcement.

Even assuming that "reasonable offer" is a vague term, the statute itself provides guidance for enforcement and allows the COGCC to further define reasonableness, which the COGCC has done. The provision in question states that a reasonable lease offer includes "terms no less favorable than those currently prevailing in the area at the time application for the order is made." § 34-60-116(7)(d)(I). This establishes a standard through which the COGCC can evaluate the reasonableness of leases. The statute further states that the COGCC "retains jurisdiction to determine the reasonableness of costs" attributable to non-consenting owners. *Id.* The COGCC has codified its method of making this determination in its Rule 530, which requires the commission to consider the offered lease terms in comparison with other leases offered in the spacing unit and all adjacent units. 2 Colo. Code Regs. 404-1, Rule 530(c)(2). From this, I must conclude that statute does not authorize arbitrary enforcement and its therefore not facially vague.

Wildgrass has another related argument. It asserts that regardless of the statute's provisions, and despite clarification in a rule, the COGCC commissioners themselves were unclear what criteria should be used to define a reasonable offer. ECF No. 65 at 20. In particular one commissioner stated that

> [t]he statute and the rule are not at all clear. There has to be an offer to lease on reasonable terms. How do you define "reasonable" and whose burden is it to produce evidence of reasonableness? Does Extraction have to support its offer to each mineral owner by providing evidence of leases and bonuses paid all around the area, or is it up to the owner to satisfy itself what the going rate is or at least to raise an objection or a concern and see if extraction will then provide additional detail? The statute and the rule are not at all clear.

Id.

Wildgrass' argument, though insufficient to show vagueness under substantive due process, does state a procedural due process issue. Namely, it asserts that Wildgrass was denied a meaningful opportunity to be heard because, given the commissioners' own confusion about the statutory criteria, Wildgrass could not know what factors would be considered at the hearing, and therefore could not prepare for it. *See, e.g.*, *Citizens Allied for Integrity & Accountability, Inc. v. Schultz*, 335 F. Supp. 3d 1216, 1227 (D. Idaho 2018) (finding plaintiffs were denied meaningful opportunity to be heard because they did not and could not know under what standard the commission would evaluate "just and reasonable" lease terms).

However, as a procedural due process argument, this claim falls prey to the same *Burford* abstention issues as Wildgrass' other procedural due process arguments. Specifically, it would require this Court to rule on whether Wildgrass had the opportunity to be heard in light of the commissioners' application of the statutory reasonable lease offer requirement. As such, this claim is similarly dismissed under *Burford* abstention.

c. Taking

Wildgrass argues that forced pooling allows the government to take non-consenting owners' private property not for a public purpose but to bestow a benefit on private oil and gas operators, violating the Takings Clause. ECF No. 74 at 13–14. "Purely private" takings violate

the "public use requirement" of the Takings Clause. *Hawaii Hous. Auth. v. Midkiff*, 467 U.S. 229, 245 (1984).

Preliminarily, I dispatch with defendants' argument that because Wildgrass has not pursued remedies at the state level, it has not appropriately exhausted its administrative remedies for a takings claim as required under *Gamble v. Eau Claire County*, 5 F.3d 285, 286 (7th Cir. 1993). Even assuming that *Gamble*, a Seventh Circuit opinion, established the requirements to state a takings claim in this circuit, defendants' argument is misplaced. The court in *Gamble* found that a plaintiff claiming lack of just compensation for a taking must first pursue compensation through all available state remedies because "[u]ntil then he cannot know whether he has suffered the only type of harm for which the just-compensation provision of the Constitution entitles him to a remedy." Unlike in *Gamble*, Wildgrass' claim is not that it has received inappropriate compensation for a taking. Rather it argues that the taking itself is unconstitutional because it does not serve a public purpose. ECF No. 74 at 13–14. Therefore *Gamble* is inapplicable.

To show a taking, Wildgrass must show a property interest, which in turn is determined by state law. *See Stop the Beach Renourishment, Inc. v. Fla. Dep't of Envtl. Prot.*, 560 U.S. 702, 707 (2010); *see also Kerns v. Chesapeake Expl., L.L.C.*, 762 F. App'x 289, 296 (6th Cir.) (unpublished), *cert. denied*, 139 S. Ct. 2033 (2019) (examining Ohio state law to determine whether statutory forced pooling implicated a property interest). In Colorado, like in Ohio, oil and gas underlying the property surface are part of a property estate. *OXY USA Inc. v. Mesa Cty. Bd. of Commissioners*, 405 P.3d 1142, 1144 (Colo. 2017). Also like Ohio, Colorado recognizes property owners' "correlative rights" in obtaining "a just and equitable profit share" from a "common source or pool" of such resources while preventing waste. *City of Longmont*, 369 P.3d

at 580–84 (quoting C.R.S. § 34–60–102(1)(b)). Thus, Colorado landowners have both property interests in the subsurface minerals and an "attendant right to recover those minerals without needless waste." *Kerns*, 762 F. App'x at 296.

The next question is whether the taking of the property interest serves a public purpose or merely conveys a private benefit. The Supreme Court has routinely found it within state police powers to regulate oil and gas in similar manners in order to serve the public interests in curbing waste, protecting correlative rights, and protecting the economy of the state. *See Cities Serv. Gas Co. v. Peerless Oil & Gas Co.*, 340 U.S. 179, 185 (1950) (citing *Champlin Refining Co. v. Corporation Commission*, 1932, 286 U.S. 210 (1932), *Railroad Commission of Texas v. Rowan & Nichols Oil Co.*, 310 U.S. 573 (1940)) ("This Court has upheld numerous kinds of state legislation designed to curb waste of natural resources and to protect the correlative rights of owners through ratable taking . . . or to protect the economy of the state."); *see also Kerns*, 762 F. App'x at 296 (collecting cases). Wildgrass has not provided any case law suggesting that these binding precedents should be ignored or should not apply to this statute. Forced pooling thus serves a public purpose. Accordingly, although Wildgrass has shown the existence of a property interest, it has not shown that the taking of such property interest does not serve a public purpose.

3. <u>Contract Clause</u>

Wildgrass argues that the forced pooling statute violates the Contract Clause because it does not require mutual consent and creates an involuntary contract. ECF No. 74 at 18–20.

In a Contracts Clause case, "[t]he threshold inquiry is whether the state law has, in fact, operated as a substantial impairment of a contractual relationship." *Energy Reserves Grp., Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 411 (1983) (quoting *Allied Structural Steel Co. v.*

Spannaus, 438 U.S. 234, 244 (1978)) (internal quotations omitted). Therefore, to violate the contracts clause there must be an existing contractual relationship that the statute substantially impairs. *Id.*

Wildgrass nowhere argues that there exists a preexisting contract that the forced pooling statute impairs. Instead, Wildgrass argues that the statute "creates a statutory contract between the non-consenting landowner and oil operator." ECF No. 75 at 18. Wildgrass provides no support for this statement but cites to cases in which a preexisting contract was altered by a statute. *See, e.g.*, *Nat'l R.R. Passenger Corp. v. Atchison Topeka & Santa Fe Ry. Co.*, 470 U.S. 451, 451 (1985).

The Supreme Court has firmly established that to create a "statutory contract," a legislature must "clearly and unequivocally express[]" intent to do so. *Atchison*, 470 U.S. at 465–66. The Colorado Court of Appeals has held that no contract exists between operators and non-consenting owners force pooled under § 34–60–116. *See Grant Bros. Ranch, LLC v. Antero Res. Piceance Corp.*, 409 P.3d 637, 643 (Colo. Ct. App. 2016).

The Colorado Court of Appeals finding does not bind me but is persuasive on the issue of the Colorado General Assembly's intent. In *Grant Bros. Ranch, LLC v. Antero Resources Piceance Corp.*, the Colorado Court of Appeals examined in detail the legislative intent behind the forced pooling statute and found that a contract did not exist between operators and non-consenting owners. 409 P.3d at 643. In my own reading of the statute I similarly find no clear indication of intent to create a contract between operators and non-consenting owners. *See* § 34-60-116.

Wildgrass also draws an analogy between the Contracts Clause and "Commerce Clause cases" in which "the Court has rejected laws granting federal administrative agencies the power

to compel contractual relationships between parties." ECF No. 75 at 18. But as Wildgrass itself states, these cases revolve around the scope of the federal interstate commerce power, not the limitations on legislatures imposed by the Contracts Clause. *See, e.g.*, *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 552 (2012). Here, the issue is whether the state of Colorado violated the Contracts Clause through exercise of its police powers, not whether the federal government has over-extended its interstate commerce power. I conclude that it has not and therefore the Contracts Clause claim must be dismissed.

CONCLUSION

The substance of this case involves important questions of state law, and the jurisdiction of a state administrative agency applying that law. Although I recognize the sincerety of the plaintiff's concerns, I conclude that a federal court is not the appropriate forum to resolve these questions. Therefore, I dismiss Wildgrass' procedural due process claims under *Burford* abstention. Wildgrass' other claims bear less weight, and I find that Wildgrass has failed to state a substantive due process claim, a Contracts Clause claim, or a First Amendment claim, and therefore those claims must be dismissed.

ORDER

Defendants' motions to dismiss Plaintiff's First Amended Complaint [ECF Nos. 66 and 67] are granted. This case is dismissed with prejudice. As the prevailing parties, defendants are awarded their reasonable costs to be taxed by the Clerk pursuant to Fed. R. Civ. P. 54(d)(1) and D.C.COLO.LCivR 54.1.

DATED this 18th day of March, 2020.

BY THE COURT:

R. Brooke Jackson
United States District Judge

EXHIBIT D

(Court of Appeals Order and Judgment)

FILED
United States Court of Appeals
Tenth Circuit

February 1, 2021

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

WILDGRASS OIL AND GAS COMMITTEE,

Plaintiff - Appellant

v.

STATE OF COLORADO; JARED S. POLIS, in his official capacity as Governor of the State of Colorado; COLORADO OIL AND GAS CONSERVATION COMMISSION; JEFFREY ROBBINS, in his official capacity as Director of the Colorado Oil and Gas Conservation Commission,

Defendants - Appellees,

and

AMERICAN PETROLEUM INSTITUTE; COLORADO OIL AND GAS ASSOCIATION,

Intervenors - Appellees.

No. 20-1151
(D.C. No. 1:19-CV-00190-RBJ-NYW)
(D. Colo.)

ORDER AND JUDGMENT[*]

Before **LUCERO**, **McHUGH**, and **CARSON**, Circuit Judges.

---

[*] This order and judgment is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

The Wildgrass Oil and Gas Committee ("Wildgrass") appeals the district court's dismissal of its federal procedural due process claim under the Burford abstention doctrine. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

I

This appeal arises from Wildgrass' challenge to the Colorado Oil and Gas Conservation Commission's (the "Commission") proceeding granting Extraction Oil & Gas, Inc.'s ("Extraction") application to pool mineral interests owned by Wildgrass members for the purpose of extraction. Wildgrass is a committee formed by residents of the Wildgrass residential subdivision of Broomfield, Colorado. In July 2018, Wildgrass members received lease offers from Extraction for access to minerals on their property. When Wildgrass members did not consent to the lease, Extraction filed an application with the Commission asking for a pooling order, which requires individuals to lease their mineral interests if the Commission determines that the leasing offer is "reasonable" based on the following criteria: "(A) Date of lease and primary term or offer with acreage in lease; (B) Annual rental per acre; (C) Bonus payment or evidence of its non-availability; (D) Mineral interest royalty; and (E) Such other lease terms as may be relevant." Rule 506(c)(3), 2 C.C.R. § 404-1.[1] Wildgrass objected, and the Commission set a hearing on the pooling application.

[1] During the events at issue, the Rule was numbered 530(c)(2), but it was recently amended to Rule 506(c)(3). The criteria provided in the rule were not changed by the amendment.

Before the hearing, Wildgrass filed a complaint for a temporary restraining order and injunction in federal district court, arguing that C.R.S. § 34-60-116, which authorizes forced pooling, violates the Privileges and Immunities Clause, the First Amendment, the Contract Clause, and the Due Process Clause. It asked the court to enjoin the Commission from entering the pooling order and for a declaratory judgment declaring the statute unconstitutional. The district court denied injunctive relief as unripe but asked the Commission to consider all the issues raised by Wildgrass in a hearing.

The Commission complied and set a date for a hearing considering whether Extraction made a "reasonable offer" for Wildgrass members' mineral interests. Before the hearing, Wildgrass was permitted to serve twenty interrogatories, twenty requests for production, and twenty requests for admission. The Commission granted many of Wildgrass' requests but did not allow Wildgrass access to all internal documents concerning Extraction's financial condition or information on all lease offers made by Extraction within a twenty-five-square-mile radius of the drilling unit and did not allow Wildgrass to introduce certain evidence of Extraction's history of accidents.

At the hearing on the pooling application, Extraction and Wildgrass were each given an hour and fifteen minutes to present their cases, which included the introduction of evidence and the presentation and cross-examination of fact and expert witnesses. After carefully considering the evidence presented, the Commission approved the pooling application, finding the leasing terms reasonable.

Wildgrass then amended its complaint in district court, adding a procedural due process claim concerning the events at the hearing. As relevant to this appeal, Wildgrass argued that the Commission failed to grant it sufficient time to present its case, erroneously denied several discovery requests, failed to state what information it would consider in determining whether the leasing terms were reasonable under Rule 506(c)(3)(E), and did not provide a meaningful opportunity for Wildgrass to be heard on issues pertaining to health, safety and wellness concerns, and environmental and financial protections.

The defendants filed a motion to dismiss based in part on the Burford abstention doctrine. The court granted the motion and dismissed the procedural due process claim under Burford and the other claims on the merits. Wildgrass only appeals the dismissal of the due process claim under Burford.

II

A district court's decision to abstain under Burford is reviewed for abuse of discretion. Marshall v. El Paso Nat. Gas Co., 874 F.2d 1373, 1377 (10th Cir. 1989). A court abuses its discretion when its decision "is arbitrary, capricious, whimsical, or manifestly unreasonable." United States v. Durham, 902 F.3d 1180, 1236 (10th Cir. 2018) (quotation omitted).

Under the Burford abstention doctrine, federal courts must decline to interfere with the proceedings of state administrative agencies when the court is sitting in equity, timely and adequate state-court review is available, and either "there are difficult questions of state law bearing on policy problems of substantial public

import whose importance transcends the result in the case then at bar" or "the exercise of federal review of the question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern." New Orleans Pub. Serv., Inc. v. Council of City of New Orleans, 491 U.S. 350, 361 (1989) (quotation omitted).

The district court did not abuse its discretion in holding that each of these requirements was met. Wildgrass sought declaratory and injunctive relief, thus the district court was sitting in equity. Timely and adequate state court review of the Commission's decision was available to Wildgrass under Colorado's Administrative Procedure Act. Though Wildgrass brought a federal claim, state courts are fully equipped to review the constitutionality of a state agency's procedures. See Burford v. Sun Oil Co., 319 U.S. 315, 325-27 (1943) (emphasizing Texas state courts' specialized knowledge over Texas' oil and gas regulatory regime in directing the district court to abstain from resolving a federal due process claim).

Additionally, the district court did not abuse its discretion in holding that federal review of the procedural issues presented risked "disrupt[ing] [] state efforts to establish a coherent policy with respect to a matter of substantial public concern." New Orleans Pub. Serv., 491 U.S. at 361 (quotation omitted). The Supreme Court has noted the risk of disruption in cases involving procedural challenges to whether a state agency "misapplied its lawful authority." Id. at 362. For example, in Burford itself, the Court considered a challenge to whether the Texas Railroad Commission properly applied Texas' complex oil and gas regulations in granting a permit to drill

four wells. 319 U.S. at 323-24. The Court directed the district court to abstain from deciding the procedural issue, noting that the plaintiff failed to exhaust state court review; Texas' regulations concerning well permits, spacing, and drilling addressed public policy problems of substantial import; and Texas had created a system of judicial review that permitted state courts and the railroad system "to acquire a specialized knowledge." Id. at 327.

As in Burford, Wildgrass has not exhausted state court remedies for its procedural due process claim, and it likewise challenges whether a state agency charged with regulating oil and gas properly applied its governing statute. Wildgrass' procedural challenges also raise important questions of state law, including whether the Commission must consider information pertaining to the environment, public health, and the operator's financial condition in pooling hearings under C.R.S. § 34-60-116. Resolving this case therefore risks creating "needless friction with state policies" and disrupting the Commission's longstanding methods of applying its own statute. Id. at 332 (quotation omitted). Under these circumstances, we cannot say the district court abused its discretion.

III

For the foregoing reasons, the judgment of the district court is **AFFIRMED**.

Appellant's motion to dismiss intervenor-appellees American Petroleum Institute and Colorado Oil and Gas Association is **DENIED**.

Entered for the Court

Carlos F. Lucero
Circuit Judge

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT
OFFICE OF THE CLERK

Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257
(303) 844-3157

Christopher M. Wolpert
Clerk of Court

February 01, 2021

Jane K. Castro
Chief Deputy Clerk

Ms. Megan L. Hayes
Attorney at Law
910 Kearney Street
Laramie, WY 82070-0000

Mr. Joseph Anthony Salazar
Colorado Rising for Communities
P.O. Box 370
Eastlake, CO 80614-0370

RE: 20-1151, Wildgrass Oil and Gas v. State of Colorado, et al
Dist/Ag docket: 1:19-CV-00190-RBJ-NYW

Dear Counsel:

Enclosed is a copy of the order and judgment issued today in this matter. The court has entered judgment on the docket pursuant to Fed. R. App. P. Rule 36.

Pursuant to Fed. R. App. P. Rule 40(a)(1), any petition for rehearing must be filed within 14 days after entry of judgment. Please note, however, that if the appeal is a civil case in which the United States or its officer or agency is a party, any petition for rehearing must be filed within 45 days after entry of judgment. Parties should consult both the Federal Rules and local rules of this court with regard to applicable standards and requirements. In particular, petitions for rehearing may not exceed 3900 words or 15 pages in length, and no answer is permitted unless the court enters an order requiring a response. *See* Fed. R. App. P. Rules 35 and 40, and 10th Cir. R.35 and 40 for further information governing petitions for rehearing.

Please contact this office if you have questions.

Sincerely,

Christopher M. Wolpert
Clerk of the Court

cc: Kyle William Davenport
Stanley L. Garnett
Mark J. Mathews
David Brandon Meschke
Caitlin Medora Stafford

CMW/lg

EXHIBIT E

(Proposed Order)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
EXTRACTION OIL & GAS, INC., *et al.*,[1]	)	Case No. 20-11548 (CSS)
Reorganized Debtors.	)	(Jointly Administered)
	)	**Re: Docket No. ___**

ORDER GRANTING REORGANIZED DEBTORS' OBJECTION TO PROOF OF CLAIM NO. 2459 FILED BY WILDGRASS OIL & GAS COMMITTEE

This matter having come before this Court on *Reorganized Debtors' Objection to Proof of Claim No. 2459 Filed by Wildgrass Oil and Gas Committee* (the "Objection"); this Court having reviewed the Objection; this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference, dated February 29, 2012; this Court having found this is a core proceeding under 28 U.S.C. § 157(b)(2); this Court having found it may enter a final order consistent with Article III of the United States Constitution; this Court having found that venue of this proceeding and the Objection in this district is proper under 28 U.S.C. §§ 1408 and 1409; this Court having found that the Reorganized Debtors' notice of the Objection and opportunity for a hearing on the Objection were appropriate under the circumstances and no other notice need be provided; this Court having reviewed the Objection and all other related materials, and having heard any argument in support or in opposition to the relief requested therein at a hearing before this Court; this Court having determined that the legal and factual bases set forth in

[1] The Reorganized Debtors in these chapter 11 cases, along with the last four digits of each Reorganized Debtor's federal tax identification number, are: Extraction Oil & Gas, Inc. (3923); 7N, LLC (4912); 8 North, LLC (0904); Axis Exploration, LLC (8170); Extraction Finance Corp. (7117); Mountaintop Minerals, LLC (7256); Northwest Corridor Holdings, LLC (9353); Table Mountain Resources, LLC (5070); XOG Services, LLC (6915); and XTR Midstream, LLC (5624). The location of the Reorganized Debtors' principal place of business is 370 17th Street, Suite 5300, Denver, Colorado 80202.

the Objection and at the hearing establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Reorganized Debtors' Objection is SUSTAINED.

2. Proof of Claim No. 2459 filed by Wildgrass Oil and Gas Committee is disallowed and expunged for all purposes.

3. The Court-appointed claims agent is authorized to, and shall, reflect the disallowance and expungement of the aforesaid Proof of Claim No. 2459 on the Official Claims Register.

4. This Court shall retain jurisdiction with respect to all matters arising from or relating to the implementation of this Order.