

# LAW OFFICE OF MATTHEW SURA

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October 24, 2017

TO: City and County of Broomfield  
Wildgrass Oil and Gas Committee  
RE: Comment on Latest Operator Agreement

Dear City and County of Broomfield –

Broomfield residents and the City and County of Broomfield (“CCOB”) are doing a great job on the comprehensive plan and draft operator agreement. It really will be “best in class” for Colorado.

Having said that, there are a few issues that are not addressed in the operator agreement that CCOB might want to consider:

- 1) **NOISE:** Noise can be one of the biggest impacts of oil and gas development. The proposed A-scale noise limits in the operator agreement are far better than required by the COGCC, but the agreement does not set limits for lower frequency C-scale noise. There are new sound wall technologies that have been able to reduce C-scale noise by 20 dBs.<sup>1</sup> If effective, this new sound wall technology should be required at all Extraction well pad locations within CCOB. C-scale limits of 65dB(C) would be reasonable to add to the noise section in the operator agreement.
- 2) **PUMP JACKS:** Eventually every oil and gas well will require some sort of artificial lift. CCOB residents will not want 80+ “nodding donkey-head” pump jacks lining E-470 in 15 years... A less visible artificial lift is linear rod pumps.

Extraction has agreed to use linear rod pumps on a multi-well pad near Windsor. I used the following language in that surface use agreement:

“Artificial lift will be accomplished through the use of linear rod pumps. Linear rod pumps will be as low profile as practicable with a maximum height of 28 feet. Another artificial lift system may be used if it is less visible, creates less noise than linear rod pumps, and is agreed to by both parties.”

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<sup>1</sup> John Ingold, NOISE IS THE BIGGEST SOURCE OF OIL AND GAS COMPLAINTS IN COLORADO, Denver Post, August 20, 2017. Available at: <http://www.denverpost.com/2017/08/20/noise-complaints-oil-gas-industry/>; New sound wall technology referenced in the article are SK-8 Panels from Environmental Noise Control. More information can be found at: [www.environmental-noise-control.com/products/freestanding-sk-8-sound-barriers/](http://www.environmental-noise-control.com/products/freestanding-sk-8-sound-barriers/)



*Traditional pump jack*



*Linear rod pump*

- 3) **COMPRESSOR ENGINES:** Once the drilling and hydraulic fracturing is complete, your biggest impact will be the compressor engines onsite. State law requires the compressor engines to meet residential noise restrictions (60 - 65dB(A)) but an audible hum for the next 30 years could prove annoying to nearby residents. Housing compressor engines within noise-reducing enclosures can greatly reduce compressor engine noise.
  
- 4) **NOTICE:** In the past year, Extraction has shown a complete disregard for notifying Wildgrass residents as required by COGCC regulations. The COGCC has shown complete indifference to notice requirements as discussed in the timeline below. Wildgrass Master Association and the Wildgrass Oil and Gas Committee are fighting for due process for all of its residents. The notice requirements that are being ignored in this spacing application are the same notice requirements that apply to forced pooling applications. If Extraction and the COGCC ignore notice provisions in this spacing application, they will likely ignore notice requirements for the forced pooling applications. The result will be that Wildgrass residents will have their mineral rights forced pooled without their knowledge or consent.

Extraction should commit to sending notice to the 20 Wildgrass residents that did not receive notice in the current spacing application. Extraction should also agree to work with Wildgrass to ensure that all residents receive forced pooling notices at least 60 days prior to the hearing (and allowing at least 60 days to respond to Extractions election letter prior to being considered a “non-consenting” mineral owner).

### **A PROPOSED SOLUTION**

CCOB is considering signing a new operator agreement with Extraction tonight in an effort to avoid a contested spacing hearing before the COGCC on October 30<sup>th</sup>. As I understand it, CCOB will agree to a 0% royalty rate, offer surface locations in CCOB-owned open space, and will withdraw its protest as a condition of the operator agreement.

I understand there is some concern among CCOB staff that their greatest leverage exists NOW, prior to the hearing on October 30<sup>th</sup>. I disagree. The CCOB has great leverage in its operator agreement negotiations because Extraction needs to locate its well site on CCOB open space. Extraction cannot obtain an agreement from land developer-McWhinney to locate the wells to the north of E-470 so

Extraction has to develop to the south of E-470. Operators are required to negotiate surface use agreements with landowners *in good faith*. (COGCC Rule 306.a) As a result, CCOB has all the leverage it needs to continue negotiations until it is satisfied that it has an operator agreement that will serve it well for the next 30 years.

We have heard that forgoing any royalty payments for Broomfield's 300+ mineral acres could cost taxpayers \$8 - \$30 million in lost royalty revenue over the next ten years. Giving away royalty revenue may not be necessary. CCOB owns the only locations that Extraction can use to access these minerals. That is all the leverage CCOB should need to obtain a better operator agreement. Typically Extraction pays landowners \$10,000 - \$20,000 *per well* for a surface location. I have not heard if Extraction is offering Broomfield any payments for the use of its open space.

I would propose that CCOB and Wildgrass approach Extraction with an offer:

- 1) File a joint motion to continue all contested spacing applications
- 2) Extraction will send notice to those residents identified at least 35 days prior to spacing hearing.
- 3) Extraction will agree to work with Wildgrass to ensure that all residents receive forced pooling notices at least 60 days prior to the hearing (and allowing at least 60 days to respond to Extractions election letter prior to being considered a "non-consenting" mineral owner).
- 4) Extraction and CCOB will continue to work in good faith toward solutions to the issues identified in this letter as well as issues raised by constituents at the CCOB hearing tonight.
- 5) In return for this showing of good faith, CCOB and Wildgrass will withdraw all protests in the spacing applications and those applications will be able to proceed on the COGCC consent agenda in December.

In this solution – all parties win.

- Wildgrass is given proper notice and is promised adequate notice prior to forced pooling
- CCOB is not rushed into signing an operator agreement, will be able to respond to additional issues that arise tonight, and will be able to ensure its constituents receive proper notice
- Extraction is able to avoid the spectacle of a contested COGCC hearing, is able to forge a better working relationship with CCOB, and will ultimately receive drilling locations from CCOB.

Thank-you for your work on this important issue.

Sincerely,



Matt Sura

*Counsel for Wildgrass Oil and Gas Committee*

## TIMELINE OF NOTICE FOR Docket Nos. 170900598 and 171000749

**August 16, 2016** - Wildgrass filed a protest in Applicant Extraction Oil and Gas Inc. Docket No. 160800350 spacing application. The proposed spacing unit included most of the Wildgrass neighborhood. One of the bases for that protest was that Extraction failed to properly notify Wildgrass and over 50 owners in the Wildgrass neighborhood.

In its protest, Wildgrass sent Extraction the correct addresses so those owners would be able to receive proper notices and participate in the COGCC decision-making processes should they choose to do so. (305 protest - Exhibit 2, *attach. 1, p.3*)

**July 20, 2017** - Extraction filed another spacing application that also included the Wildgrass neighborhood - Docket No. 170900598. Again, Extraction failed to notify Wildgrass and numerous owners.

**August 28, 2017** - Wildgrass again protested the fact that Extraction did not send notice of the application. Wildgrass, again, supplied its correct mailing address. (598 protest – Exhibit 3, *p. 2*).

**September 13, 2017** - Extraction filed a new increased well density application (Docket No. 171000749) and yet again failed to send notice to Wildgrass, the attorney of record for Wildgrass, and 19 owners in Wildgrass.

**October 3, 2017** – At a prehearing conference in Docket No. 170900596, counsel for Extraction admitted Extraction had a) not sent the Applications to Matt Sura, attorney for Wildgrass, and b) mailed a copy of the Applications to Wildgrass at the wrong address. Counsel for Extraction stated that Extraction sent the Applications to 27 Inverness Dr. in Englewood, Colorado – which has not been the address for the Wildgrass Master Association for many years.

The Hearing Officer required Extraction to send spacing application (Docket No. 171000749) to Wildgrass counsel. Hearing Officer required any protest on Docket No. 171000749 from Wildgrass to be filed by October 6<sup>th</sup> - ten days prior to the deadline of October 16<sup>th</sup>.

**October 4, 2017** – Extraction requested a prehearing conference on Docket No. 170900598 and 171000749 for the following day – October 5<sup>th</sup>. Both CCOB and Wildgrass stated that they would not be available but meeting was scheduled over their objections.

**October 5<sup>th</sup>, 2017** - At the prehearing conference, Wildgrass made an oral stay of proceedings for lack of notice which was denied. Hearing Officer denied Wildgrass and CCOB any discovery and set up the following timeline under protest by both Wildgrass and

CCOB. The Hearing Officer stated that any new protests on Docket No. 171000749 from Wildgrass residents had to be filed by October 10<sup>th</sup>.

<b>Task</b>	<b>Date</b>
Deadline for C.R.C.P. Rule 16 full and complete disclosure	October 6, 2017
Deadline to file protests to Docket No. 171000749	October 10, 2017
Deadline to file prehearing statements, witness lists, and proposed exhibits (electronically only)	October 12, 2017
Deadline to file any evidentiary motions and objections to witnesses or exhibits	October 16, 2017
Deadline to file responses to prehearing statements, list of rebuttal witnesses and exhibits, rebuttal exhibits (electronically only)	October 18, 2017
Proposed final prehearing order	October 18, 2017
Final prehearing conference, including oral argument on any motions	October 20, 2017 at 1:30 p.m.
Deadline to file proposed orders and final admitted exhibits	October 23, 2017
<b>HEARING DATE</b>	<b>October 30-31, 2017</b>

**October 6, 2017** – Extraction made some disclosures – including the mailing list that showed that Extraction had mailed to the wrong address for Wildgrass and, through investigation, Wildgrass found that 19 addresses were wrong and several additional Wildgrass residents had failed to receive notice.

Wildgrass filed its protest of Docket No. 171000749.

**October 10, 2017** – Wildgrass Oil and Gas Committee (“WOGC”) filed a protest on Docket No. 171000749 because 19 addresses were wrong and two of its members, Nancy Roberts and Janet Beaver, did not receive notice and were able to complete affidavits in time for the protest.

**October 12, 2017** – Wildgrass and WOGC filed an Emergency Motion to Continue Docket No. 170900598 and 171000749. Broomfield formally joined motion.

**October 20, 2017** – Final Prehearing Conference – Hearing Officer denied Motion to Continue because Wildgrass and WOGC were not prejudiced by the lack of notice.