

BEFORE THE OIL AND GAS CONSERVATION COMMISSION

IN THE MATTER OF THE APPLICATION)	
OF ST. VRAIN PARTNERS, LLC FOR AN)	
ORDER REVOKING VARIANCES GRANTED)	CAUSE NO. _____
BY THE DIRECTOR AND AN ORDER)	
REVOKING DRILLING PERMIT NOS.)	
20031340, 20031341 AND 20031342 AND)	ORDER NO. _____
AFFECTING CERTAIN LANDS LOCATED)	
IN WELD COUNTY, COLORADO)	

VERIFIED APPLICATION

St. Vrain Partners, LLC, a Colorado limited liability company (the “Applicant”), by its attorneys Otis, Coan & Stewart, LLC makes this application (the “Application”) to the Oil and Gas Conservation Commission of the State of Colorado (the “Commission” or “COGCC”) for an order revoking certain variances and permits to drill approved by Richard Griebeling the Director of the COGCC as more particularly described below. In support of this Application, the Applicant states as follows:

I AFFECTED PARTIES

1. The parties affected by the decision of this Commission pursuant to this Application are the Applicant described above and Encana Energy Resources, Inc. (“Encana”). The Applicant is the owner of a significant portion of the surface estate in the area described as the SW $\frac{1}{4}$, Section 7, T2N, R67W of the 6th P.M. There are various other surface estate owners within said SW $\frac{1}{4}$ since the subject property has been subdivided and portions thereof sold as further described below. Encana is the owner of an interest in the oil and gas leasehold estate in the SW $\frac{1}{4}$, Section 7, T2N, R67W of the 6th P.M. and is the operator of the same.
2. The Applicant is an interested party in these proceedings pursuant to Rule 503.b.7. The Applicant, as the owner of a substantial portion of the surface estate and as the surface developer has been and will be directly and adversely affected and aggrieved by the variances granted by the Director of the COGCC unless the Commission requires the Director and Encana to comply with the Rules and Regulations of the COGCC and revokes the permits to drill approved by the Director identified as Permit Nos. 20031340, 20031341 and 20031342. The Applicant is a party entitled to protection under the Oil and Gas Conservation Act and the Rules and Regulations of the COGCC.

II SUMMARY OF FACTS

3. Encana presently plans to drill the Wandell 14-7, Wandell 23-7 and the Wandell 24-7 (the "Subject Wells") in Tract B located in Block 3 of the St. Vrain Ranch Subdivision Filing V. Tract B is owned by the St. Vrain Ranch Community Association, a Colorado nonprofit corporation. The Applicant presently owns the platted lots in the area around Tract B and constituting the balance of Blocks 2, 3 and 4 of the St. Vrain Ranch Subdivision Filing V. The perimeter of Tract B is a surface property line dividing the property owned by the Applicant and the property owned by the Association of property owners in the St. Vrain Ranch Subdivision. Applicant's property is less than 150 feet from the proposed location of the Subject Wells. The Subject Wells are also about 76 feet away from a public road.
4. Applicant has previously owned and subdivided a substantial portion of the south half of Section 7, T2N, R67W 6th P.M. The majority of the south half of Section 7 (after the Applicant's subdivision and installation of infrastructure) has been sold to various building companies that have constructed residences and sold said residences to private individuals who now own those subject properties.
5. Beginning in approximately November of 1996, the Applicant engaged in discussions with Vessels Oil and Gas regarding development of the surface of the majority of the S½ of Section 7. Discussions with representatives from Vessels Oil and Gas continued through December 30, 1996 at which time said representatives informed the Applicant that the interests of Vessels Oil and Gas were the subject of a potential sale to a third party. No further discussions with Vessels Oil and Gas regarding the development of the property were possible until approximately June 1997 at which time Mr. Andy Boden of Vessels Oil and Gas indicated that the interests of Vessels had been sold to North American Resources Company ("NARCO") and that the sale was given an effective date of January 1, 1997. Mr. Boden requested that the Applicant contact NARCO's representative, Mr. Mike Holland, and discussions ensued with Mr. Holland and other representatives of NARCO associated with the Applicant's planned use of the surface of the majority of the south half of Section 7.
6. The Applicant received estimates from Pan Energy Field Services, Inc. during July 1997 for the relocation and reconstruction of certain pipelines within the subject property pursuant to the Applicant's development plans for the subject property. Said pipelines were subsequently relocated and reconstructed consistent with the Applicant's development plans for the St. Vrain Ranch Subdivision by Pan Energy Field Services, Inc. The first relocation was completed in 1998 and the second relocation was completed in July of 2000. The Applicant paid Duke

Energy Field Services, Inc. (the successor to Pan Energy Field Services, Inc.) \$96,800.00 as a result of both pipeline relocations.

7. On or about February, 2000, the Applicant received estimates from NARCO for the costs to relocate the tank batteries associated with the Wandell 2 and Wandell E-1 within the St. Vrain Ranch Subdivision and consistent with the Applicant's development plans for the same. Each said tank battery was subsequently relocated by NARCO to within platted tracts created by the Applicant's subdivision plans and the relocation costs of \$22,700.00 were paid by the Applicant to NARCO in October of 2000.
8. Beginning in 1997, the Applicant was diligently proceeding with the subdivision and development of the St. Vrain Ranch Subdivision. At all times after said date, NARCO, the predecessor to Encana, and Encana were aware of and involved in the Applicant's plans for development of the surface of the property. Various public hearings regarding the St. Vrain Ranch Subdivision were conducted by the Town of Firestone beginning in 1997. The entirety of Applicant's ownership of the S $\frac{1}{2}$ of Section 7, was master planned by the Applicant and approved after public hearings before the Town of Firestone around the end of 1997 even though subsequent plats were approved and recorded to create specific lots.
9. The portion of the St. Vrain Ranch Subdivision that is directly affected by Encana's proposed wells ("Filing V") was subdivided and the final plat for Filing V was recorded on April 4, 2001 at Reception No. 2837824 in the office of the Weld County Clerk and Recorder. All infrastructure within Filing V including water, sewer, gas, and electric as well as streets and storm water drainage were completed not later than October, 2001 at a cost to the Applicant in the millions of dollars. At all times prior to and during construction of all infrastructure for the St. Vrain Ranch Subdivision including Filing V, Encana and Encana's predecessors in interest were aware of the Applicant's surface development activities and, in fact, participated in the same.
10. On or about June 20, 2002, Encana sent several Notices of Intent to Drill to the Applicant indicating that Encana intended to drill eight separate wells within the St. Vrain Ranch Subdivision being developed by the Applicant. Four of said wells were to be located within the SWSW, Section 7, T2N, R67W and four of said wells were to be located in the SESE, Section 7, T2N, R67W. Upon receipt of said Notices, the Applicant requested good faith consultation and indicated to Encana that the Applicant did not believe Encana could meet the setback requirements contained in the COGCC Rules and Regulations (see **Exhibit A** attached hereto).
11. On or about October 25, 2002, Encana sent an additional Notice of Intent to Drill five of the wells that were the subject of the June 20, 2002 Notice. The October 25, 2002 Notice of Intent to Drill identified different surface locations for five of the previously proposed wells and on November 5, 2002, an additional letter was

- sent by the undersigned to Encana requesting good faith consultation (see **Exhibit B** attached hereto). A few times during this period, after receiving the initial Notices, representatives of both Applicant and Encana discussed the matter and the Applicant continued to indicate to Encana that it did not appear Encana could meet the COGCC Rules and Regulations for the proposed locations.
12. After approximately January, 2003, Applicant received no further communications from Encana until July, 2003 at which time the Applicant received a copy of an additional Notice of Intent to Drill addressed to the St. Vrain Ranch Community Association (the owner of the specific parcel upon which Encana proposed to drill) identifying an intent to drill the Subject Wells (see **Exhibit C** attached hereto). The undersigned again responded requesting a good faith consultation on behalf of Applicant and the St. Vrain Ranch Community Association (see **Exhibit D** attached hereto).
 13. On July 11, 2003, it appears that Encana mailed or delivered its Applications for Permits to Drill the Subject Wells. Subsequently, Encana requested the Director grant Encana a variance from the setback requirements of Rule 603 associated with the distance to the nearest building, public road, above ground utility or railroad for the Subject Wells (see **Exhibit E** attached hereto).
 14. Once the Applicant determined that Encana had submitted the applications for the Subject Wells, the undersigned reviewed said applications to confirm the information contained therein was correct. The information contained therein was not correct and on August 11, 2003, the undersigned sent via facsimile to Ed Dimatteo of the Oil and Gas Conservation Commission a letter with attachments identifying the discrepancies in the application information. Said letter is attached hereto as **Exhibit F**.
 15. Additional discussions were held between the undersigned and the COGCC staff and the staff indicated to the undersigned that the application would not be approved without a waiver from the offsetting property owners nor would it be approved without the agreement of the Town of Firestone for the closure of all streets within 150 feet or one and one half times the height of the derrick during the drilling. Subsequent to those conversations, Encana requested a waiver from the Applicant and the Town of Firestone for the surface property line setback pursuant to COGCC Rule 603a.(2). Minimal discussion occurred between the Applicant and Encana associated with the waiver requested of Applicant.
 16. The undersigned subsequently discovered that without any further notice to the Applicant, the Applications for Permits to Drill the Subject Wells were approved by the Director of the COGCC on October 1, 2003. After discussions with the COGCC staff, it was determined that the Director also granted variances to Rule 603 under Rule 502(b). The approved Permits to Drill containing the variances to Rule 603 are each attached hereto as **Exhibit G**. Contrary to the staff's comments by phone, the variance granted to Encana was not conditioned upon receiving a

waiver from the offset property owners nor upon the Town of Firestone closing certain public roads during drilling. Additionally, the variances as granted by the Director, are variances to all of Rule 603 rather than to the specific setback requirements for which Encana requested variances.

III ALLEGATIONS

17. The Applicant alleges that the Director exceeded his authority by granting variances to all of Rule 603 pursuant to Rule 502 b. Rule 502 b. specifically states:

Variance to any Commission rules, regulations, or orders may be granted in writing by the Director without a hearing upon written request by an operator to the Director, or by the Commission after hearing upon application. The operator or applicant requesting the variance shall make a showing that it has complied with the specific requirements contained in these rules to secure a variance, if any, and that the requested variance shall not violate the basic intent of the Oil and Gas Conservation Act.

18. Encana only requested “a variance regarding distances to nearest building, public road, above ground utility, or railroad for [the Subject Wells]” (see Exhibit E attached hereto). The variance requested in writing by Encana is a variance to COGCC Rule 603a.(1) only. Encana did not request a variance to any other requirement of COGCC Rule 603, yet the Director granted a variance to all of the requirements of Rule 603. The Director is not authorized to grant a variance to any Commission rule, regulation or order unless the Director receives a written request by an operator for the same (see COGCC Rule 502b.(1)). Therefore, the variance to Rule 603 granted by the Director is invalid and improper as it is not authorized by Rule 502b.(1).

19. The Applicant also alleges that the Director exceeded his authority by granting a variance to Rule 603a.(2) which specifically states that in order for the Director to grant such a variance to said Rule, “a waiver [must be] obtained from the offset surface owner(s).” Said Rule specifically states:

A well shall be a minimum distance of 150 feet from a surface property line. An exception may be granted by the Director if it not feasible for the operator to meet this minimum distance requirement and a waiver is obtained from the offset surface owners.... (emphasis added).

Said provision goes on to state that: “An exception request letter stating the reasons for the exception shall be submitted to the Director and accompanied by a

signed waiver(s) from the offset surface owner(s). Such waiver shall be written and filed in the county clerk and recorder's office and with the Director."

20. Rule 603a.(2) is very specific as to what is required in order for the Director to be authorized to grant an exception or variance to the setback required by said Rule. A waiver must be obtained from the offset surface owner, said waiver has to be in writing and has to be filed with the county clerk and recorder's office. Therefore, since Rule 502b.(1) specifically states that the operator or applicant requesting the variance shall make a showing that it has complied with the specific requirements contained in the COGCC Rules to secure a variance if any, Encana was required to show that it had received a waiver from the offset surface owners in order to be entitled to receive an exception or variance to Rule 603a.(2). The Director was and is constrained by the specific provisions of Rule 603a(2) and the Director is required to determine that a waiver has been obtained from the offset surface owners. No waivers have been obtained by Encana or the COGCC staff from the offset surface owners (the Applicant and the Town of Firestone) that would trigger the Director's discretion in granting an exception or variance to Rule 603a(2).
21. While the Applicant specifically objects to the variance granted by the Director as provided hereinabove, it is also important for the Commission to note that the Town of Firestone has not agreed to close Dogwood Street which is approximately 76 feet away from the proposed well locations. Additionally, as set forth in the August 11, 2003 letter attached hereto as Exhibit F, the Commission should also note that the dedication of Dogwood Street pursuant to Colorado Revised Statute § 31-23-107 vested in the Town of Firestone, the fee title to the property dedicated thereby. Said dedication and the application of C.R.S. § 31-23-107 indicates that Dogwood Street does not just delineate a public road, it also identifies a separate surface ownership, therefore, a waiver from the Town of Firestone pursuant to Rule 603a.(2) is also required in order for the Director to grant an exception allowing Encana to drill wells within a distance of 150 feet from the property line created thereby. This fact is supported by the fact that Encana requested such waiver from the Town of Firestone.
22. The variances granted by the Director and the permits to drill the Subject Wells approved by the Director do not comply with the COGCC Rules and, in fact, violate the basic intent of the Oil and Gas Conservation Act and the intent of the Commission in promulgating Rules 502 and 603.

IV REQUEST FOR RELIEF

23. The COGCC Rules only permit the Director to grant a variance to a Commission Rule upon written request by an operator. Encana has only requested a variance to the requirements of COGCC Rule 603a.(1), yet the Director granted a variance

to all of the safety regulations contained in Rule 603 entirely. The variances granted by the Director should be revoked by the Commission.

24. COGCC Rules and Regulations require that a well cannot be drilled within 150 feet of a surface property line. An exception or variance may only be granted if a written waiver is executed and received by the Director from the offset surface owner. Without waivers from the offsetting property owners, the variances granted by the Director are improper and must be revoked by the Commission.
25. In the instant situation, Encana has not met the requirements of the Rules and the Director, therefore, does not have discretion to permit the wells Encana proposes within the St. Vrain Ranch Subdivision. Additionally, the staff has previously taken the position that they would not permit any wells within 150 feet or one and one half times the height of the derrick from a public road pursuant to Rule 603a.(1) unless the political body with jurisdiction over said public road agrees to close the public road during drilling. None of the requirements of the COGCC Rules and Regulations have been met in this case and both the variances and permits to drill were improperly approved by the Director.

WHEREFORE, the Applicant respectfully requests that this matter be set for a hearing by the Commission; that notice thereof be given as required by law; that upon such hearing this Commission issue its order granting this Application and thereby revoking the variances granted by the Director and revoking the drilling permits approved by the Director for the Wandell 24-7 (Permit No. 20031340) the Wandell 23-7 (Permit No. 20031342) and the Wandell 14-7 (Permit No. 20031341).

Applicant further requests that the Commission, in its order grant such other provision as the Commission may find to be necessary or desirable in this cause.

DATED this ____ day of November, 2003

OTIS, COAN & STEWART, LLC
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Greeley, CO 80634
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By: _____
G. Brent Coan. #27592

Applicant's Address: 1570 S. Quebec Way, #60, Denver, CO 80231

VERIFICATION

STATE OF COLORADO)
)ss.
COUNTY OF WELD)

Rodney Unger as President of Manatee Design Group, Inc. as a member of St. Vrain Partners, LLC, being first duly sworn upon oath, states that he has read the foregoing Verified Application before the Oil and Gas Conservation Commission of the State of Colorado, and the contents thereof are true and correct to the best of his knowledge and belief.

Rodney Unger, President, Manatee Design
Group, Inc. as a Member of St. Vrain
Partners, LLC

SUBSCRIBED and SWORN to before me on November ____, 2003, by Rodney Unger as President of Manatee Design Group, Inc. as a member of St. Vrain Partners, LLC.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

LIST OF INTERESTED PARTIES

Encana Energy Resources, Inc.
850 17th Street, Suite 2600
Denver, CO 80202

Town of Firestone
Cheri Anderson
P.O. Box 100
Firestone, CO 80520

Weld County
Lee Morrison
P.O. Box 758
Greeley, CO 80634

St. Vrain Ranch Community Association
P.O. Box 810
Firestone, CO 80520