

BEFORE THE OIL AND GAS CONSERVATION COMMISSION  
STATE OF COLORADO

IN THE MATTER OF PERMITS TO DRILL       )  
ISSUED TO LEXAM EXPLORATIONS       )  
(U.S.A) INC. (PERMITS NOS. 2006A069       )  
AND 2006A070), ON THE BACA NATIONAL       )  
WILDLIFE REFUGE, IN SAGUACHE COUNTY)

Docket No. \_\_\_\_\_

**VERIFIED APPLICATION FOR AN EXTENSION OF TIME IN WHICH  
TO COMMENCE DRILLING OPERATIONS ON  
PREVIOUSLY APPROVED PERMITS TO DRILL**

Lexam Explorations (U.S.A.) Inc., a Colorado corporation, ("Lexam") respectfully applies for a variance, pursuant to OGCC Rule 502(b)(1), granting it an extension of time of one year in which to commence drilling operations under previously issued Permits Nos. 2006A069 and 2006A070.

As grounds for this Application, Lexam states as follows:

**The Regulatory Standard**

1. Under Rule 502(b)(1), the Commission may grant a variance to an OGCC rule or regulation upon a showing by the applicant that "it has made a good faith effort to comply, or is unable to comply with the specific requirements contained in these rules to secure a waiver or exception, if any, and that the requested variance will not violate that basic intent of the Oil and Gas Conservation Act."

2. OGCC Rule 300.h states:

h. **Permit expiration.** If operations are not commenced on the permitted well within one (1) year after date of approval, the permit shall become null and void. The Director shall not approve extensions to applications for Permit to Drill, Form 2.

3. Lexam seeks a variance to Rule 300.h to extend the expiration date for Permits Nos. 2006A069 and 2006A070 for a period of one-year or until April 2, 2009.

**Background**

4. Since the late-1990s, Lexam has owned 100% of the non-oil and gas mineral rights and 75% of the oil and gas rights beneath an approximately 100,000 acre property located in Saguache County, Colorado, formerly known as the Luis Maria Baca Grant No. 4 (the "Baca Grant"). The remaining 25% of the oil and gas interest is owned by ConocoPhillips Company.

5. Lexam permitted and drilled two wells (Baca Wells #1 and #2) in 1995 pursuant to permits issued by the OGCC. These wells were plugged, abandoned and reclaimed in accordance with OGCC rules. Two other wells (Baca Wells #3 and #4) were permitted, but never drilled.

6. In 2000, the surface of the Baca Grant was acquired by The Nature Conservancy and subsequently transferred to the United States Fish and Wildlife Service ("USFWS").

7. On November 22, 2000, Public Law 106-530, entitled the "Great Sand Dunes National Park and Preserve Act," was approved, resulting in creation of the Baca National Wildlife Refuge ("BNWR"). The BNWR is administered by the USFWS.

### **Lexam's Current Exploration Program**

8. On October 26, 2006, Lexam filed Applications for Permits to Drill with the OGCC for two wells commonly referred to as Baca Well #5 and Baca Well #6.

9. In December 2006, Lexam conducted field work and baseline water quality sampling at numerous surface and subsurface sites on and near the BNWR in cooperation with the USFWS, the National Park Service and the Baca Grande Water and Sanitation District in preparation of its planned exploration. The sampling program was pre-approved by the agencies identified above, and Lexam provided the resulting data to them.

10. Lexam retained TRC Mariah Associates, Inc. to investigate and document cultural resources on the BNWR that may be affected by Lexam's exploration program. The cultural resources survey was conducted in late-October and early-November 2006 (before the first snowfall) and covered approximately 16,000 acres on the BNWR. The cultural resources data were provided to the USFWS.

11. Lexam conducted a 3-D seismic survey on the BNWR in early-2007 after receiving a permit from the OGCC to conduct the survey and also agreeing to a number of measures required by the USFWS to protect the surface.

12. The Applications for Permits to drill for Baca Well #5 and Baca Well #6 were issued by the OGCC as Permits Nos. 2006A069 and 2006A070 (collectively referred to herein as the "Permits"). Permit No. 2006A069 is located in SE $\frac{1}{4}$  NE $\frac{1}{4}$ , Section 33, Township 43 North, Range 11 East, N.M.P.M. Permit No. 2006A070 is located in NE $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 28, Township 43 North, Range 11 East, N.M.P.M. Two maps showing the project area and the location of the wells are attached hereto as Exhibit A.

13. The Permits were issued on April 3, 2007 and expire April 2, 2008. OGCC Rule 300.h states: "If operations are not commenced on the permitted well within one (1) year after date of approval, the permit shall become null and void."<sup>1</sup>

14. In addition to the usual requirements set forth on the face of the Permits, the Permits are subject to 18 additional "Conditions of Approval" as a result of comments submitted by the USFWS, Saguache County, the Rio Grande Water Conservation District and others. Copies of the Permits are attached hereto as Exhibits B and C, respectively.

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<sup>1</sup> Lexam also has filed an Application for Permit to Drill for Baca Well #7, which is currently pending at the OGCC. Lexam anticipates that it will drill Baca Well #5 and either Baca Well #6 or Baca Well #7.

## **Environmental Issues Related to the Permits**

15. Lexam's oil and gas rights, which were held by it at the time the USFWS acquired the surface, are referred to as "excepted rights" in the USFWS Manual, Land Use Series, 612 FW 2, Oil and Gas. The USFWS Manual and USFWS regulations (including, in particular, 50 C.F.R. § 29.32) contain detailed provisions related to protection of the USFWS surface by the holders of excepted rights.

16. In late-2006 and early-2007, the USFWS and Lexam were jointly preparing a Negotiated Operating Plan ("NOP") consistent with provisions of the USFWS Manual and USFWS regulations. The NOP was a 50-page document that described Lexam's exploration program and protection of surface resources on the BNWR. The NOP included various agreements between the USFWS and Lexam related to the exploration program and also described the specific measures that Lexam would apply to protect the surface of the BNWR. For example, Lexam agreed to cement its surface casing to a depth necessary to protect the shallow and deep aquifers in the San Luis Valley, to use a closed loop mud and cutting system and to remove cuttings from the BNWR for off-site disposal (all of these measures were subsequently incorporated into the Permits).

17. On May 8, 2006, the San Luis Valley Ecosystem Council ("SLVEC") filed a Complaint against the USFWS in federal District Court in the District of Colorado alleging that the USFWS was required to take certain actions under the National Environmental Policy Act ("NEPA") in order to determine appropriate measures to protect the surface of the BNWR. Lexam was not named as a defendant in the Complaint.

18. On July 18, 2007, rather than incur litigation expense, the USFWS filed a Motion to Remand the underlying action back to the agency to allow it to prepare an Environmental Assessment (an "EA"). Under NEPA, preparation of an EA generally leads to either a Finding of No Significant Impact (a "FONSI") or an Environmental Impact Statement (an "EIS"). The Motion to Remand took no position on the applicability of NEPA to these facts.

19. The Motion to Remand estimated that it would take approximately 180 days to complete the EA.

20. On November 28, 2007, the District Court Judge granted the Motion to Remand.

21. The EA, prepared by ENSR on behalf of the USFWS, was completed and distributed for public comment on or about January 18, 2008. A public meeting will be held on February 12, 2008, and the public comment period will end on March 2, 2008.

22. After the close of the public comment period, the USFWS will determine whether to issue a FONSI or proceed to an EIS.

23. Representatives of the SLVEC have stated in recent newspaper articles that further NEPA-related litigation will be filed if a FONSI is issued by the USFWS.

24. As a result of its communication and cooperation with the USFWS, its attendance at several public meetings in the San Luis Valley, completion of the water sampling program and the cultural resources survey, negotiation of the NOP with the USFWS and its participation in the

NEPA process, Lexam has demonstrated its diligent efforts to commence drilling operations pursuant to the Permits.

### **The Saguache County Moratorium**

25. In early-January 2008, Saguache County adopted a resolution imposing a “moratorium” on oil and gas permitting in the County until July 7, 2008, by which time the County expects to have enacted new land use regulations applicable to oil and gas activities.

26. Since Lexam’s exploration program is located on federally-owned property, the County’s moratorium does not directly impact Lexam. However, the moratorium resolution also purports to prohibit issuance of road permits for transportation of drilling-related equipment over county roads during the period of the moratorium.

27. Lexam entered into an “Agreement Related to Drilling and Exploration Activities in Saguache County, Colorado,” with the County on April 17, 2007. This Agreement includes provisions related to issuance of road permits (the Agreement also addresses chemical testing of cuttings by Lexam prior to landfill disposal in the County).

28. Lexam has agreed with the USFWS that it will not conduct any activities on the BNWR from May-July so as not to interfere with nesting birds, elk calving, etc. Because of this agreement, and in light of the Agreement between Lexam and the County, it is not clear whether the moratorium will have an impact, as a practical matter, on Lexam’s drilling operations or construction of roads and pads on the BNWR.

29. For purposes of this Application, the County’s moratorium resolution represents an additional circumstance which Lexam is diligently and in good faith trying to work through and resolve so that it can commence drilling operations.

### **Project Water Supply**

30. Lexam anticipates that it will file shortly a substitute water supply plan with the Colorado State Engineer’s office related to the water supply for the drilling operation.

31. In March 2007, Lexam approached the Baca Grande Water and Sanitation District about an agreement by which the District would sell replacement water to Lexam; however, the Board of Directors of the District declined to enter into such an agreement.

32. Lexam expects that it will purchase replacement water from a private source for use as part of a substitute water supply plan.

33. Lexam’s efforts to obtain a project water supply further demonstrate its good faith efforts to timely commence drilling operations under the Permits.

### **Application of Rule 502(b)(1)**

34. As noted above, Rule 300.h expressly precludes the Director of the OGCC from granting a waiver or exception to the expiration date of the Permits ("The Director shall not approve extensions to applications for Permit to Drill, Form 2.").

35. By letter dated January 23, 2008, Lexam's drilling contractor requested Acting Director Neslin to grant a variance pursuant to Rule 502(b)(1). Mr. Neslin subsequently determined, however, that the last sentence of Rule 300.h, quoted immediately above, prevented him from acting on Lexam's variance request.

36. The Commission has favorably considered and approved at least one similar variance request in the past. In Docket No. 0306-GA-04, the Commission granted Gunnison Energy Corporation a one-year extension in which to commence drilling in light of delays associated with its land use permitting in Delta County. See Cause No. 1, Order No. 1-101.

37. Lexam's Permits were issued after the Commission received numerous public comments as well as comments from the USFWS and Saguache County. The Permits contain 18 specific and detailed Conditions of Approval that take into account the public comments and the determinations of the OGCC staff. The Permits have been, and continue to be, acceptable to Lexam.

38. A variance which extends the Permits makes more sense than starting a new permitting process. None of the events described in this application that have delayed drilling operations concern the terms and conditions of the Permits. Therefore, new APDs would simply request issuance of new permits that replicate the existing Permits. For the same reasons, Lexam believes that a variance extending the Permits is more cost-effective and efficient for OGCC staff than starting a new permitting process.

WHEREFORE, Lexam respectfully requests that the Commission grant it a variance, pursuant to OGCC Rule 502(b)(1), from Rule 300.h, which will grant to Lexam an extension of time of one year in which to commence drilling operations under previously issued Permits Nos. 2006A069 and 2006A070 (to and including April 2, 2009).

Submitted this \_\_\_\_\_ day of February 2008.

CARVER SCHWARZ McNAB & BAILEY, LLC

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## VERIFICATION

PROVINCE OF ONTARIO )  
 )  
CANADA ) SS.

I, \_\_\_\_\_, being first duly sworn upon oath, state that I am the \_\_\_\_\_ of Lexam Explorations (U.S.A). Inc., that I have read the foregoing VERIFIED APPLICATION FOR AN EXTENSION OF TIME IN WHICH TO COMMENCE DRILLING OPERATIONS ON PREVIOUSLY APPROVED PERMITS TO DRILL, and that the same is true and accurate to the best of my belief and knowledge.

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Subscribed and sworn to before me this \_\_\_\_ day of February 2008, by  
\_\_\_\_ as the \_\_\_\_\_ of Lexam Explorations (U.S.A). Inc.

Witness my hand and official seal.

(SEAL)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_