

BEFORE THE COLORADO OIL AND GAS CONSERVATION COMMISSION

STATE OF COLORADO

Cause No. _____

**AMENDED APPLICATION TO DESIGNATE FOR ORDER CREATING A
DESIGNATED OUTSIDE ACTIVITY AREA PURSUANT TO RULE 603.d
AND TO WITHHOLD APPROVAL OF DRILLING PERMITS
PURSUANT TO RULE 303.k**

Applicants Mike Sutam and Laura W. Chase,

by and through undersigned counsel, hereby file this Amended Application to designate the Property as described in Exhibit "A" hereto as a "Designated Outside Activity Area" ("DOAA") pursuant to Oil and Gas Conservation Commission Rule 603.d, and to withhold the issuance of any drilling permits on the Property pursuant to Rule 303.k. In support of their Amended Application the Applicants state the following: **Amended Application for Designated Outside Activity Area**

1. The original Application in this matter was filed on November 7, 2008. The cause was docketed, and then it was removed from the Commission's docket while the parties attempted to resolve their differences. See Exhibit "B" hereto (partial attachments only). Those efforts have been unsuccessful, as the operator Magpie Operating, Inc. ("Magpie") has continually rejected Applicants' invitation to "meet and confer" in regards to their request to drill on Applicants' Property.

2. The Applicants are the fee surface owners of the Property, and operate a three-day event boarding, training and competition facility for horses and riders on it.

3. The Property for which the DOAA is requested has been developed specifically and exclusively for equestrian training and competition over a period of about 13 years. It is currently owned and managed by Applicants under the name of Moqui Meadows.

4. The Property is a 77.32 acre parcel located in Larimer County, Colorado. A map of the area depicting the boundaries of Applicants' property is attached hereto and incorporated herein by this reference as Exhibit "C". Facilities at the Property include, but are not limited to: barns, stables, indoor and outdoor arenas, outside cross-country courses, show jumping courses, instruction areas and related facilities. The Property is located at 8445 East County Road 14, Loveland, Colorado 80534 and is in the Johnson's Corner Field, J Sand, Niobrara-Codell Formations, Larimer County, Colorado.

5. The Property is heavily used by residents of, and nonresident visitors to, Colorado. It is one of the few equestrian facilities in the area that is capable of hosting three-day and cross-country events. Annual visitation in 2009 has exceeded the requirements of the DOAA rule.

6. The effort and expense that has been required over the years to make Moqui Meadows suitable for its intended equestrian purposes cannot be overstated. Well over \$1.2 million has been invested in the Property to contour the land, build berms and banks, construct jumps, water facilities, barns, stables and arenas. Vehicles have not been allowed on the Property, except on designated roadways around the house and the hay barn. The tracks on the majority of the Property are maintained with special footing and are conditioned as horse galloping tracks so vehicles are not allowed on them except on an extremely limited basis. Rocks and other possible hazardous impediments have been removed by hand, and continue to be removed on almost a daily basis. Because the Property has been used solely for equestrian purposes for many years, the soil has become relatively soft and suitable for training and for staging

7. Aside from irreparable and irreversible damage to the terrain, the equestrian courses cannot be used for equestrian purposes if oil and gas wells and related surface facilities are placed thereon. This type of horse competition and training involves rider and horse traveling at high speeds and accomplishing intricate jumps, turns and other maneuvers. Three-day eventing is an Olympic event and is the sport during which actor Christopher Reeve was paralyzed. Oil and gas equipment would pose a substantial risk of serious injury or death to the horses and their riders.

8. The 100 Series Definitions of the Oil and Gas Conservation Commission Rules provides that a DOAA is a “well defined outside area (such as a playground, recreation area, outdoor theater, or other place of public assembly) that is occupied by twenty (20) or more persons on at least forty (40) days in any twelve (12) month period or by at least five hundred (500) or more people on at least three days in any twelve (12) month period.” See Oil and Gas Conservation Commission Rules and Regulations “Definitions” (100 Series), 2 CCR 404-1. Moqui Meadows qualifies as a well-defined outside area where public usage satisfies the requirements for its designation as a DOAA.

9. Oil and gas development activity, which is otherwise subject to regulation by the Oil and Gas Conservation Commission, has been proposed on the Property by Magpie. That development activity would adversely impact and endanger public health, safety and enjoyment of the Property. Oil and gas development activity would greatly increase the risk of injury or death to both riders and horses.

10. Pursuant to Oil and Gas Conservation Commission Rule 603.d, and upon application and hearing, the Oil and Gas Conservation Commission is authorized to determine the appropriate boundaries and setbacks and other regulatory requirements applicable to oil and gas development in proximity to a DOAA. Because the Property is not compatible with oil and gas development, Applicants request pursuant to Rules 603.d and 303.k, and C.R.S. §34-60-106(2)(d) that no drilling permits should be issued for the Property.

The Proposed Operations are Contrary to the Lease and its Bond Requirements.

11. Paragraph 9 of the Lease (attached as Exhibit “D” hereto) that covers the Property restricts the lessee’s operations, stating that there shall be “[n]o exploration, drilling or production operation, including permanent installations, [] within 200 feet of any building or other improvement, including water, well or reservoir, without the written permission of the owner of said improvements.” The Property has been transformed by Applicants’ efforts from raw land to a developed equestrian facility. Like a playground, golf course, or park the entire Property is an “improvement”, based upon the amount of effort that has been invested in putting course structures, *i.e.* horse jumps and other facilities, on the Property and assuring that the terrain is soft and suitable for cross-country riding.

12. Applicants’ request for a DOAA status is supported by paragraph 9 of the Lease, in that any oil and gas operations on the Property would damage the improvements to the Property, including riding courses that have been established throughout the Property.

13. Further, paragraph 10 of the Lease also limits the lessee’s operations and states:

Lessee shall be liable and agrees to pay for all damages to the surface of the land, livestock, growing crops, water wells, reservoirs, or improvements caused by lessee’s operations on said lands. It is agreed and understood that no operation shall be commenced on the lands hereinabove described unless and until the lessee or his assignee shall have filed a good and sufficient bond with the lessor in

an amount to be fixed by the lessor, to secure the payment of such damages to the surface of the land, livestock, growing crops, water or improvements as may be caused by lessee . . .

Magpie's statewide bond will be insufficient to compensate Applicants for damages from its operations on the Property, which will essentially destroy it as an equestrian facility. Applicants have invested well over \$1.2 million and over 15 years in the facilities for the Property, not including labor to build all the jumps, machinery costs to build the banks, ditches, hills, and other land contours, and the time it has taken to build good will and reputation, and to advertise the facility.

14. If operations are permitted on the Property, Applicants request that the Commission require the operator to post a bond of no less than \$2 million, payable to Applicants in accordance with paragraph 10 of the Lease.

WHEREFORE, Applicants respectfully request that the Oil and Gas Conservation Commission set the Application for hearing, that the Oil and Gas Conservation Commission designate the Property as a Designated Outside Activity Area and otherwise establish minimum setbacks and other regulatory requirements applicable to oil and gas development in proximity to the Property that are sufficient to protect the Property, as well as the public's use and enjoyment of the Property, and that no drilling permits be issued with regard to the Property. In the alternative, if operations are permitted on the Property, Applicants request that operator's bond be set at a level which will fully compensate Applicants for damages to their Property, in an amount to be proven at any hearing in this matter. Applicants further request such other relief as the Commission determines to be just and appropriate.

DATED this _____ day of November, 2009.

Respectfully submitted,

PHILLIP D. BARBER, P.C.

By: _____

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Attorney for the Applicant

VERIFICATION

I, Laura W. Chase, one of the Applicants, hereby certifies that the facts asserted in this Application are true and correct to the best of my personal knowledge.

Laura W. Chase

STATE OF COLORADO)
)
County of Larimer) ss:

SUBSCRIBED AND SWORN to before me this _____ day of November, 2009, by
Laura W. Chase.

Notary Public

My Commission Expires: _____

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **AMENDED APPLICATION TO DESIGNATE FOR ORDER CREATING A DESIGNATED OUTSIDE ACTIVITY AREA PURSUANT TO RULE 603.d AND TO WITHHOLD APPROVAL OF DRILLING PERMITS PURSUANT TO RULE 303.k**, has been mailed this _____ day of November, 2009 to the following entities that require notice of such filing:

Colorado State Board of Land Commissioners
1313 Sherman Street, Room 621
Denver, CO 80203

Magpie Operating, Inc.
2707 South County Road 11
Loveland, CO 80537

Robert Cline
Contex Energy Company
621-17th Street, Ste. 1020
Denver, CO 80293-2501

Richard G. Olona, Esq.
Olona & Associates, P.C.
7472 S. Shaffer Lane, Ste. 130
Littleton, CO 80127-7406

EXHIBIT "A"

Parcel I:

That portion of the W1/2 of the SE1/4 of Section 36, Township 5 North, Range 68 West of the 6th P.M., Larimer County, Colorado described as follows:

Considering the West line of said SE1/4 of Section 36, as monumented with a #6 rebar 30" long with a 2-1/2" aluminum cap L.S. #17662 at the Center of Section and at the South Quarter Corner of said Section 36, as bearing North 00° 07' 33" East and with all bearings contained herein relative thereto.

Beginning at said South Quarter Corner of Section 36; thence along said West line of the Southeast Quarter North 00° 07' 33" West 1256.52 feet to the True Point of Beginning; thence continuing along said North line North 00° 07' 33" West 1384.69 feet to the Center Quarter Corner of said Section 36; thence along the North line of said West half of the Southeast Quarter North 89° 57' 52" East 1328.94 feet to the East line of said West half of the Southeast Quarter North 89° 57' 52" East 1328.94 feet of the East line of said West Half of the Southeast Quarter of Section 36; thence along said East line South 00° 03' 29" West 1396.43 feet; thence North 89° 31' 40" West 1324.53 feet to the True Point of Beginning. Containing 42.352 acres more or less.

Parcel II:

That portion of the W1/2 of the SE1/4 of Section 36, Township 5 North, Range 68 West of the 6th P.M., Larimer County, Colorado, described as follows:

Considering the West line of said Southeast Quarter of Section 36, as monumented with a #6 rebar 30" long with a 2-1/2" aluminum cap L.S. #17662 at the Center of Section and at the South Quarter Corner of said Section 36, as bearing North 00° 07' 33" East and with all bearings contained herein relative thereto.

Beginning at said South Quarter Corner of Section 36; thence along said West line of the Southeast Quarter Corner North 00° 44' 33" East 1256.52 feet; thence South 89° 31' 40" East 1324.53 feet to the East line of said West Half of the Southeast Quarter of Section 36; thence along said East line South 00° 03' 29" West

573.99 feet to the North line of that certain parcel of land as described at Reception No. 96035630, records of said county; thence along said North line and the West line of said parcel of land South 89° 49' 18" West 175.00 feet and again South 00° 03' 30" West 668.00 feet to the South line of said Southeast Quarter of Section 36; thence along said South line South 89° 49' 18" West 457.25 feet to the North Quarter Corner of Section 1, Township 4 North, Range 68 West of the 6th P.M.; thence continuing along said South line South 89° 51' 49" West 688.22 feet to the True Point of Beginning. Containing 35.247 acres more or less.

Both of these parcels are in the Johnson's Corner Field; J Sand, Niobrara-Codell Formations; Larimer County, Colorado.